

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE GENERAL HEARING

July 23, 2009

7:00 p.m.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Thomas Scott, Member

Christopher Chan, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Christopher Chan).

CONSTANTINE ALEXANDER: The Chair will call the meeting of the Zoning Board of Appeals to order, and as is our practice we start with our continued cases. And the first continued case I'm going to call is case No. 9729, 12 Mount Vernon Street.

Is there anyone here with respect to that petition?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that there is no one here. By way of background, this case has been before us since back in November of last year. It's been continued many times. We have -- at the last meeting when we continued it to tonight, the Chair had advised the

petitioner that this -- there would be no further continuances. That we were going to decide this case one way or another. But we do now have a letter in the file from the petitioner addressed to the Board. It appears to be undated. But the date stamped as received today, July 23rd.

"Please be informed that due to a death in the family we will not be able to attend the meeting. Thank you for your attention to this matter." And it's signed by Gerald and Maria Ming the petitioners.

I would defer to other members of the Board or the Board as a whole, but I think on the basis of this letter we should continue the case one more time. I think the circumstances are a bit unfortunate. Well, first of all is that the sentiment, you want to go to the merits, and I think if we are going to continue it, there is some questions about

signage so we can talk about that.

BRENDAN SULLIVAN: Well, the only question I had is that it really does not comply with the notification tentative to our ordinance.

CONSTANTINE ALEXANDER: We're talking about the signage, right?

BRENDAN SULLIVAN: Regarding signage, and the posting. But it's -- and I think Mr. O'Grady has indicated, and I concur, that it is very difficult for them to comply with it. And I guess my thought is that because this has been going round and round and round and round, that enough people in the neighborhood should be aware of it. This gentleman constantly and consistently shows up. I'm not saying he's the only one interested in it. You may be the very affected by it.

MALE AUDIENCE MEMBER: I'm representing several of the other neighbors.

BRENDAN SULLIVAN: Well, that was my question, but I think by your presence being here, is indicative that it is well advertised and that the public is known.

CONSTANTINE ALEXANDER: And there are letters in the file going back to the original hearing. So it's not a --

BRENDAN SULLIVAN: Yes, right. I just didn't want to make the posting part of the procedure to be a problem later on. I think that the case should be dealt with.

CONSTANTINE ALEXANDER: On the merits.

BRENDAN SULLIVAN: On the merits.

CONSTANTINE ALEXANDER: Right.

Just to elaborate again for the record, the nature of the site of the property makes it impossible to have a sign not more than 20 feet from the street line. It's sort of a clustered development. But there is a sign. Posted

at least as of two days ago when I went by, in an area that would be visible to someone walking along the pathway. So I agree with Mr. Sullivan that we should hear the case on the merits. The posting is sufficient. Provided it continues to be and maintained and we'll put that as a condition of the continuance.

Sean, when would we continue this case to?

SEAN O'GRADY: I think we can do it after or September 24th or later.

CONSTANTINE ALEXANDER: I'm going to ask this gentleman since you are going to be here. Is there a date -- is that okay with you September 24th?

MALE AUDIENCE MEMBER: Yes, thank you for your consideration.

CONSTANTINE ALEXANDER: I'm sorry, I didn't hear what you said.

MALE AUDIENCE MEMBER: I said thank you for your consideration to ask.

Yes, that's fine. I will represent the neighbors at that time.

CONSTANTINE ALEXANDER: Okay.  
September 24th, that's a case not heard.  
So whoever five of us are here that day.

The Chair moves to continue this case until seven p.m. on September 24th.

The Chair notes that there is a waiver of the time already in the file, but that the continuance be conditioned upon the petitioner continuing to maintain a sign that's as legible -- as visible as possible given the site, with the new date shown on the sign. And we would ask, I would ask, not as part of the motion, but I would ask Mr. O'Grady to advise the petitioner in writing of this. So there's a written record that they're supposed to maintain that sign through the 24th.

SEAN O'GRADY: Okay.

CONSTANTINE ALEXANDER: I will add, not as part of the motion, but what I



said at the last meeting will go to the 24th. We are going to decide this case one way or another on the 24th, absent the extremely unfortunate circumstances that seem to appear tonight.

All those in favor of continuing the case until that time, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Hughes, Sullivan, Scott, Chan.)

(Whereupon, a discussion was held off the record.)

(7:05)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9569, 45 Foster Street.

Is there anyone here on that petition?

(No response.)

CONSTANTINE ALEXANDER: There is none.

Do we know that the petitioner, Sean, wants to further continuance? We have nothing in the file. Should we wait? Maybe we should --

SEAN O'GRADY: Why don't we wait until 7:30. Let's recess this case and move on.

CONSTANTINE ALEXANDER: Thank you.  
(Whereupon, a discussion was held off the record.)

(7:05 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Christopher Chan.)

CONSTANTINE ALEXANDER: We have one other case that is not on the regular agenda and it's not a continued case. And we should hear that now under the circumstances.

This case involves case No. 9642, petitioner being Cambridge Affordable Housing Corporation, and it involves a comprehensive permit that this Board granted and dated August 7, 2008.

Is there anyone here on that matter?

ATTORNEY PETER FREEMAN: Yes, Mr. Chairman. If I may, shall I sit up here or stand --

CONSTANTINE ALEXANDER: Or stand, sit, kneel, whatever you like.

ATTORNEY PETER FREEMAN: Thank you. First of all, my name is Peter Freeman. I'm the attorney representing the applicant. And we also have with us the architect, George Metzger. We have Billy Thomas from the Cambridge Affordable Housing Corporation, and we have Martha Blythe from the YWCA, which as you probably know, owns the property in question.

Under the comprehensive permit statute Chapter 40-B there is a simple procedure for submitting to the Zoning Board a request for a change, either substantial or insubstantial. We believe that these are insubstantial. The two

changes that we are requesting you approved. And if you agree that they're insubstantial, then that really means that they're approved. You don't go on to kind of debate the merits per se just so you know. What it does mean though is there would be no need for a public hearing. In other words, it's insubstantial and it's within the protocol and the regulations and all to do it on this basis as an insubstantial or minor change. The two changes first of all, are to move a portion of the building that presently and as approved is very close, about four inches -- six inches to the property line of the Rink Realty Trust perpendicular to Temple Street and that's the foundation wall for the garage. The main building, and I have Mr. Metzger here for the main purpose of explaining the site plan and the change, if you need further elaboration. The main part of the

building has always been setback 14 feet from the property line, and that doesn't change. But this four feet in the complaint that the plaintiffs made on appeal, and they're here tonight, which of course is fine. I let them know about this hearing -- this meeting rather, just so you know. The complaint certainly indicated that they felt as though it was too close to their property line, so we wanted to do something that we thought would move it further away and still respect the integrity of the design and the merits of how it works on the street and in the street scape. And so under the guidelines, which I have copies if you're interested -- but under the guidelines and the regulations that I cited, it appears to us that it clearly qualifies as being an insubstantial change. It doesn't involve -- you could have changes that are insubstantial if they're ten percent or

fewer additions or reductions in the number of unit, or square footage that it doesn't change by more than ten percent smaller or bigger. Certain things like that are in the examples in the regulations considered insubstantial changes.

CONSTANTINE ALEXANDER: So, the plans we approved back in August, the building was going to be four-tenths of a foot from the lot line?

ATTORNEY PETER FREEMAN: Right. That's right.

CONSTANTINE ALEXANDER: And now you're going back to four feet back from the lot line?

ATTORNEY PETER FREEMAN: Right. A portion which I mentioned a portion.

CONSTANTINE ALEXANDER: Right, a portion. The portion of the garage is a foundation.

ATTORNEY PETER FREEMAN: That's

right.

CONSTANTINE ALEXANDER: Foundation wall.

ATTORNEY PETER FREEMAN: That's right. And let me just quickly explain No. 2 because that's real simple.

CONSTANTINE ALEXANDER: Before you get to No. 2 --

ATTORNEY PETER FREEMAN: Sure.

CONSTANTINE ALEXANDER: -- let me get on the record that this case -- our decision in that case is on appeal to the Court.

ATTORNEY PETER FREEMAN: Yes, it is.

CONSTANTINE ALEXANDER: This matter is, the Court should be aware, I'm sure they are, this matter that's before the Court is a litigious matter and something that we should take into consideration in considering your request.

ATTORNEY PETER FREEMAN: I



understand that. I appreciate that. And actually let me just hand you a couple of copies if you don't mind, of the regulations in questions. They start at the very bottom of that page. Because the Chapter 7060CMR Section 56 regulations do talk about changes after issuance of a permit, and those are the regulations that I'm deferring to. So, we'll come back to a brief explanation by Mr. Metzger of the plan change.

Let me just quickly tell you No. 2 that's in the letter that I submitted making this request. For some reason in the decision itself it made the proper findings that the applicant was qualified and had a subsidy from one of the government programs. The project eligibility letter so-called was in existence at the time. It was issued, I think it was May 14th, and I've attached it to this. For some reason it wasn't

specifically referred to in the decision, and I just thought it would be better to tighten it up and just do it as a minor amendment certainly insubstantial.

CONSTANTINE ALEXANDER: Had it been submitted to us in connection with your original petition?

ATTORNEY PETER FREEMAN: I wasn't involved in the original hearings as you know. I believe that what happened is the table of contents from the binder that was submitted, which I do have a copy of, clearly listed it as an item. It said project eligibility letter I believe, something to that effect. When I looked at it, what was submitted was actually the precursor to the actual project eligibility letter. It was a letter from DHCD that said we acknowledge we received your application. So I think it was a simple clerical error, be it be the applicant initially, and then an

oversight, not an error, if you actually didn't have it. Again, I can't --

CONSTANTINE ALEXANDER: That's the point I want to get on the record. It was not an oversight on the part of the Board --

ATTORNEY PETER FREEMAN: Right.

CONSTANTINE ALEXANDER: It was a failure of the applicant to submit the letter with this application.

ATTORNEY PETER FREEMAN: That's right. If I referred otherwise, I apologize. But, you know, that's why we submitted it again because I didn't know that it had been there. So that's how that happened. And I certainly think that's quite elementary.

Let me just ask George if he can briefly, not a lengthy presentation, but if you could just take out the plans and just explain it.

CONSTANTINE ALEXANDER: And,

again, so you've got to give your name and address for the stenographer. You've been through this before. And if you need to come forward to get a better view, please feel free.

ATTORNEY JONATHAN WITTEN: Thank you, Mr. Chairman.

GEORGE METZGER: The site plan as we -- George Metzger, M-e-t-z-g-e-r, 130 Bishop Allen Drive, Cambridge.

The site plan as was submitted with the original application showed the proposed building. This is the existing Y building on the corner of Temple and Bishop Allen Drive (indicating), and it's attached Tanner Hall, the five-story residential building. The proposed building sat -- sits here (indicating) as was originally proposed, four-tenths of a foot off the property line, on the line of the existing pool building, which occupies this same space back to here (indicating).

CONSTANTINE ALEXANDER: And the bottom of that is that another structure?

ATTORNEY PETER FREEMAN: And then from -- excuse me, I didn't understand your question.

CONSTANTINE ALEXANDER: Well, I want to make sure. It almost looks like it's on the street. It's not on the street.

GEORGE METZGER: No.

CONSTANTINE ALEXANDER: Yes.

GEORGE METZGER: Right here is the drive, the service drive of Rink Realty which fronts on Mass. Avenue.

CONSTANTINE ALEXANDER: Okay.

GEORGE METZGER: So, the property line is virtually on the line of the building four-tenths to the south. In looking at it and listening to some of the concerns of the abutter, we were able to determine that we could in fact pull the foundation wall and the garage wall back

four feet, provide a planting strip or whatever else might be desired along that side. The building above remains in the same position that it is. And we are able to do this simply because in the garage plan down below we had four feet of additional space, both in the aisle here and in a space here that we could pull this wall in without changing any of the dimensions that the traffic and parking department asked us to adhere to in terms of the circulation of the first floor, of the ground floor of the building. It moves this wall of the build -- so this is the new wall of the building (indicating). This is the property line four feet away (indicating). The small deck outside of the three-bedroom unit on the first floor is slightly smaller. The garage ramp wall moves in, reducing the size of this unit slightly, but keeping it approximately the same size, this other one bedroom

apartment. So it doesn't compromise the space of the unit. The rest of the building upstairs remains essentially in the same alignment and the same configuration. So, it's really only the foundation wall which is four feet high here where the deck is and higher where it supports the roof over the garage entrance.

CONSTANTINE ALEXANDER: Okay. Let me for the record, Mr. Metzger has submitted an Affidavit. The Affidavit in its entirety, I'm going to have incorporated into the record of these proceedings, but I'm only -- because it's long, I'm only going to read the relevant -- what I believe to be the relevant parts of the Affidavit for the benefit of those -- other people in attendance. If anyone wishes, I can read the whole Affidavit.

The Affidavit says in relevant parts, "That the proposed change -- as

been described -- is not a substantial change, specifically the proposed minor design change A, does not impact in any matter the height of the building as previously approved by the Board.

"B, does not alter in any respect the number of housing units to be developed.

"C, does not alter the size of the site.

"And D, does not alter the design type of building as previously approved by the Board.

"And E does not also seek to change the form of housing tenure."

And it goes on, to No. 8 of the Affidavit. "Further the proposed design change A, does not alter the number of housing units, 42 as previously approved. Only adjusts the floor area of one of the 42 total housing units. As explained above, one of the one-bedroom units will



be adjusted in size to accommodate the setting back of the foundation wall by about 75 square feet so that its size is consistent with the remainder of the remaining one-bedroom units. That single unit will be changed from 720 square feet to 645 square feet.

"If C, involves no change to the number of bedrooms within the approved project as a whole, as well as within the individual units.

"And D, does not change the color or style of the materials used."

Questions from members of the Board at this point on this part of the request?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: No?

Go to the second part of your request and then open it up to public comment.

JONATHAN WITTEN: Thank you, Mr. Chairman.

ATTORNEY PETER FREEMAN: Thanks, George.

The second part is probably most easily explained by just reading what I requested in writing in my July 15th letter, and incorporation asking you to approve and incorporation by reference into the comprehensive permit decision of the project eligibility letter dated May 14, 2008 from DHCD which is under the low housing income tax credit program. And I attached the letter. And as I explained, the -- I think it's more of a housekeeping matter because of our error in that it wasn't submitted even though it did exist. And not to complicate it theoretically, even if it was after the fact, 40-B and even certain other Zoning Law, but it does allow things to be rectified after the fact. This is kind of a process in flux. But that's not even the case. I mean, it did exist, you know, because your hearings

were in June or July as you recall, and this was dated May. So I would think that that is what you call a housekeeping or correcting our mistake but it's just to make sure that that letter was referenced.

So, that's really all I would want to take your time for unless you have questions and happy to answer them.

CONSTANTINE ALEXANDER: Again, for the record, the Chair will note that we have -- the petitioner has submitted this letter dated May 14, 2008 from the Commonwealth of Massachusetts Department of Housing and Community Development. It's a two-page letter. Again, the letter will be incorporated by reference into the record of this case. I don't propose to read it. In my judgment it basically contains -- it is a standard letter of eligibility letter. The usual conditions and warnings. It contains no information, no information that was not before the

Board when we heard the case back last summer, and particularly there's no what I would consider adverse information.

Information that might have been adverse to the petitioner with regard to which petition before us. And it is a standard type of letter. I'm happy to pass this around to members of the Board if you'd like to see it.

Questions from members of the Board at this point? I'll open this -- I'm sorry, Chris.

CHRISTOPHER CHAN: I just quickly read the handout and that describes the insubstantial and substantial and the form of the application. It doesn't say anywhere in there that the Board is supposed to have a hearing on whether to determine something as substantial or insubstantial. It actually says if you find it substantial, then you have a hearing. So I'm just curious as to why we

are actually meeting this way right now.

CONSTANTINE ALEXANDER: Fair.

ATTORNEY PETER FREEMAN: I think that the wording of the regulation is in concert with the fact that any decision by a Board, even if it's administerial, not calling for a public hearing, has to take place at a meeting like this, the open meeting. And so therefore even though you're absolutely right if you find it's insubstantial, there is no need for a hearing, you can't by talking or doing any administratively at the office sometime without a meeting in the public like this, you can't make such a determination.

CONSTANTINE ALEXANDER: That is the answer. You have --

CHRISTOPHER CHAN: So basically it is in conflict -- not in conflict. We have to follow the open meeting laws for the meeting itself?

CONSTANTINE ALEXANDER: Right.

CHRISTOPHER CHAN: Or for the work itself.

CONSTANTINE ALEXANDER: The issue really that would be before us tonight is whether they need a public -- an advertisement, whether we have to advertise this so that everyone will be notified of this. And if we decide tonight that the request being sought is substantial, then we will have to advertise and have a hearing.

ATTORNEY PETER FREEMAN: That's correct. And, again, as I quickly pointed out as the Chairman noted, it is on appeal and I wanted to make sure that I sent copy to the counsel for the plaintiffs both of the substance of exactly what I sent to you, which I did on the exact date that I mailed it to this Board, and also I -- although we just found out really a day and a half ago, but we did call, that's why they're here. We did call Mr. Witten

to let him know that you were going to be meeting it about this tonight. So, thank you.

CONSTANTINE ALEXANDER: To points or questions before I put it up to public testimony.

One, even by pushing the setback to four feet from four-tenths of a foot, you're still not compliant with the setback requirement for the Zoning By-Law.

ATTORNEY PETER FREEMAN: That's correct.

CONSTANTINE ALEXANDER: Okay.

And the second point being is the person most directly affected by the pulling back, the abutter to the wall that's now a little bit further back, are those the persons that are appealing the case in court?

ATTORNEY PETER FREEMAN: Yes.

CONSTANTINE ALEXANDER: So --

ATTORNEY PETER FREEMAN: It's a

trust, Rink Realty Trust.

CONSTANTINE ALEXANDER: A realty trust?

ATTORNEY PETER FREEMAN: Yes.

CONSTANTINE ALEXANDER: Rink Realty Trust?

ATTORNEY PETER FREEMAN: Yes.

CONSTANTINE ALEXANDER: I'll open it to public testimony.

Sir, come forward and you give your name and address.

ATTORNEY JONATHAN WITTEN: Sure. Thank you, Mr. Chairman, members of the Board. My name is John Witten. I'm an attorney with the law firm of Daley and Witten. And I'm here, Mr. --

CONSTANTINE ALEXANDER: Do you want to spell Witten for the stenographer.

JONATHAN WITTEN: Sure. W-i-t-t-e-n. Daley and Witten.

And I'm here, Mr. Chairman, representing the abutters that the



Chairman was just discussing with Attorney Freeman, Rink Realty Trust, and they are at the property of 711 and 727 Massachusetts Avenue.

Mr. Chairman, Members of the Board, I'm here to ask the Board to declare this a substantial change. And let me start really at the end of the conversation and say why. The substantial change to determination doesn't mean the Board says no to the petition. It says that the Board requires a public hearing. The public hearing has all sorts of benefits the Board is well aware of. The public gets to be informed, the public gets to comment. Maybe most importantly the Board gets to have review by the city engineering staff. The Board gets to listen to commentary both in writing and orally as to what the project's moving would do in terms of impacts, and the Board gets to have a fuller record. The

delay in the requirements of a public hearing is nominal, but it affords the public due process, the right to be heard and the right to comment. And having said that, I appreciate, Mr. Chairman, you're allowing us to speak tonight, but there are many other people I suspect that would like to participate that wouldn't know about tonight's meeting. I appreciate Peter Freeman providing us notice, but as a matter of law, the Board wasn't required to provide notice.

CONSTANTINE ALEXANDER: Question, maybe it's to Mr. Freeman.

You made this change pushing the building back from four-tenths of a foot to four feet without talking to the petitioner? I mean, I would have thought you would have had a conversation, and you say you were going to pull it back four feet and then we would have come here on a cooperative basis.

ATTORNEY PETER FREEMAN: I certainly have Mr. Witten amplify as he wishes. Certain discussions are confidential. But clearly from the complaint itself and discussions with counsel, one of the things, I'm not saying it's the only thing, but one of the things that they are complaining about and alleging in their court complaint is this close proximity very virtually on the property line. So, we, in terms of letting them know, I discussed it many times with counsel that we could perhaps do something like this, and so I think that that meets your question. And then of course I immediately gave them the change in the plan when we did it.

CONSTANTINE ALEXANDER: Did you know they were going to object tonight?

ATTORNEY PETER FREEMAN: No, I did not object. And, you know, I don't want to disturb Mr. Witten's time.

CONSTANTINE ALEXANDER: And I'm not looking to get involved in conflict of conversation. Let me cut to the chase. This is a project that had a lot of public interest beyond Mr. Witten's clients. There were a number of other people, the church had a concern on a different part of the property. So this is a project that has some public notoriety to it. You can't go forward with the project, your client can't because of the case that's on appeal. The one reason for -- so why not have a public hearing? Have notice to let everybody know about it. Your argument against it would be you have some time pressures, you have construction schedule, but that's not the case. So why shouldn't we have a public hearing? Why do we have to get into this question about substantial and not insubstantial?

ATTORNEY PETER FREEMAN: I can give you a couple of sound reasons.

CONSTANTINE ALEXANDER: I'd be happy to hear them.

ATTORNEY PETER FREEMAN: First of all, it's contemplated within the decision itself that there were design changes. There's supposed to be a dialogue with the community development department, you know, before the actual construction takes place.

Secondly, in 40B, which is a different animal in many respects from 40A, this type of what we sincerely believe are minor insubstantial changes are part of the typical protocol and scenario. And that's why the regulations, you know, if we were kind of asking you based on common law or something like that, I think the point might be well taken. But the reason that the regulations exist are to help expedite. And I understand and acknowledge that you're saying well, how does it expedite

if, you know, it's on appeal and you can't rush to construction anyway? It could expedite because we know that we've made this change and we know that we've made every effort that we can right away to satisfy the neighbor that may or may not help anything in terms of possibly settling the case. But I can say that we've made every effort to discuss and try to satisfy them to settle the case. I don't see that any purpose is given when it is such a minor change, because it's not just the fact that other people might want to speak or have some input. If there's any question in your mind that there's some possible negative impact to somebody, then I can appreciate the fact. And I do many, many 40B's and other affordable housing projects around the state. And I respect Boards when they say well, it does seem minor but, you know, so-and-so may be impacted negatively. It

defies my imagination how this can be viewed as negative. Quite frankly, I find it somewhat illogical that even on procedural grounds the abutters, albeit they are the plaintiffs in the litigation, this is the type of thing they want. They certainly don't have to withdraw their appeal if it's moved back. They certainly don't have to do that. But they're the ones that said it's too close. I just can't see any purpose in delaying it sincerely.

ATTORNEY JONATHAN WITTEN:

Mr. Chairman, I know the Board doesn't want to hear arguments tonight but I really --

CONSTANTINE ALEXANDER: No, no. Maybe I shouldn't have interrupted your comments.

ATTORNEY JONATHAN WITTEN: No, no and I do appreciate that. But I do want to respond to Attorney Freeman's comments.

CONSTANTINE ALEXANDER: Please.

ATTORNEY JONATHAN WITTEN: The Rink Realty Trust's objection to the original decision as issued by this Board was multifold.

The most notable objection, and the one that is now the focus of a summary judgment action pending in Middlesex Superior Court, is an Affidavit from Rink Realty Trust stating that no license or easement has been granted to the applicant to use their property. And a deposition of Mr. Metzger where he testified twice that the Rink Realty Trust property would be needed to construct the building that you approved. That is the motion for summary judgment, and a judge will decide that if we have to go that far. Moving the building four feet will not change Rink Realty Trust's position or in my opinion, Mr. Metzger's ability to build this project without obtaining an easement



or a license or permission from Rink Realty Trust. It is not in a city an insubstantial change to move a building four feet or sometimes even two feet. If we're in the suburbs, maybe, but not when we're dealing with properties that deal this proximate to each other. So it's not an insubstantial change by the very nature of the surrounding property. What is the harm in allowing the public to comment in a formal process and allowing city officials to weigh in? The 40-B process is complicated enough. I don't believe the Board has had a chance or is it fair to ask the Board to try to scale a plan that's impossible to scale with no scale on it. Mr. Metzger's plans maybe tonight have scales. The material you have don't. So I don't know how the Board, even if you're skilled in drawings and measuring distances, how you can determine anything from the plans that have been submitted.

What could be the harm in delaying the matter for 30 days while you advertise for public hearing and allowing the public's opportunity to testify as well as city officials.

On the second point, Mr. Chairman, the issue of the project eligibility letter, I think that one is a sensitive one because it goes to the current litigation. The applicant is asking this Board to reopen the record of the case that's under litigation. And we strongly and vigorously oppose that. That, again, is requiring, I believe, a public hearing to identify why it's not in your file. We had the right to examine, as part of our appeal, why that letter was missing. That's a jurisdictional prerequisite to moving forward. And I would respectfully suggest that allowing it to be put in the record on an insubstantial process, not a public hearing, would violate my client's

rights to due process. That's not fair. That hearing was long since closed, and the Board would be essentially being asked to reopen it, stick it back in the file and say it's over. And respectfully, I don't believe you can do that.

So for those reasons, Mr. Chairman, we would respectfully ask the Board declare it a substantial change, allow it to go to a public hearing and the Board can use its good judgment to decide it accordingly.

And, Mr. Chairman, if I could just for the record, I do have a letter that we'd like to submit and I do have a copy for my brother as well. That's the original, Mr. Chairman.

CONSTANTINE ALEXANDER: This is basically summarizing your arguments that you've made?

ATTORNEY JONATHAN WITTEN: That's right.

CONSTANTINE ALEXANDER: It's not a letter from an abutter or anything of that sort? Okay. I trust everything that's in this letter you touched upon in your oral comments?

ATTORNEY JONATHAN WITTEN: Yes, sir, I have.

CONSTANTINE ALEXANDER: There's no need to read it into the record?

ATTORNEY JONATHAN WITTEN: You don't have to. Thank you.

CONSTANTINE ALEXANDER: Questions of Mr. Witten? Members of the Board, no questions?

Is anyone else wishing to be heard on this matter?

ATTORNEY JONATHAN WITTEN: Thank you, Mr. Chairman.

CONSTANTINE ALEXANDER: There's nothing else in the file, this case not having been advertised. I think we're going to close public testimony and

consider it on the merits. And I guess I'll lead off.

This seems to me this is a substantial change under all the circumstances. I'm not prepared to allow these changes to be made without the public being notified and the city officials. That would be my view.

Members of the Board? Brendan?

BRENDAN SULLIVAN: Yes, I do not think that they are substantial changes. They are changes but I think they are going in the right direction as far as coming off the side yard by -- to four feet from the .4 and it doesn't change, I don't think, the envelope per se, which is the one that we approved. We approved the proposal, the package in toto, the -- for the affordable housing, for the number of units, for the garage, for the site plan, and that this diminishes that somewhat. So I think it's in the right direction.

As far as the document, I think that it was probably an oversight on the Cambridge Housing Authority and also the Board that it was not part of the checklist. And we assumed they had approval and they did, it was just the document was not there. I don't think that's fatal to their proposal.

I would really like to separate the two issues, though. Whether it's in litigation or not, makes no difference to me. I think that what we have to do is take this particular issue that's before us, decide whether it's substantial or not and move forward, but not be clouded by the litigation. So I would -- my thought it is not substantial.

CONSTANTINE ALEXANDER: It's not substantial or it's not insubstantial?

BRENDAN SULLIVAN: It is not substantial change.

CONSTANTINE ALEXANDER: Okay.

Okay. I just want to make sure.

Tom?

THOMAS SCOTT: I think it is a substantial change. And I think one of the reasons is that, you know, you're basically -- you've made a concession but you've made a concession based on what you feel is right for -- or what will make your project work. That concession, though, had no input from, you know, people who are, you know, opposing this. So I think, I think we should open it up to public review so that everybody has their say.

CONSTANTINE ALEXANDER: Chris?

CHRISTOPHER CHAN: I disagree. I think it has nothing to do with whether people have a say or not. You just got to read what it says here, is it substantial or not substantial, based on that whether it should be a public hearing or not. That's why I was questioning wither people

should be here or not. The only reason people are here is because we cannot do it another way. But in fact the guidelines do not require anybody to be here for -- in the regulations for the discussion of this itself, not the (inaudible). An increase of more than ten percent of the height of the building, substantial. Ten percent increase in the number of housing units. A reduction in the size of the site of more than ten percent in excess of any decrease in the number houses. Change in building type. A change from one form of housing tenure to another. Those are all substantial. One would suggest, then, that if ten percent might be the guideline limit for that, it's more than ten percent, that it's substantial. If it's less than ten percent, it's insubstantial. Following matters will not be substantial changes. Reduction in the number of housing units proposed, but it doesn't



have a number, it just has a reduction. A decrease of less than ten percent in the forwarded areas of individual units. A change in the number of bedrooms within individual units. A change in color or style. A change in the financing program. The four foot at one floor would seem to me to be an insubstantial reading those. I would certainly if we got the percentage of area, percentage of housing units, we would probably, I don't know, I could ask for testimony, it would probably be in the one, two, three, four five percent range or less, but it would not be ten percent I would imagine. Because just looking at the size of the amount of space that would change it. So while I understand the -- that there are people upset about this matter and that the main people want to open it up and that there be arguments about who said what and whether it's good for them or not good for

them to have brought this up now, the only thing before us is whether that's ten percent or more or insubstantial insubstantial. It's not whether it's a good idea. It may have been a terrible idea for them to do this. But I would argue that it was substantial. I would agree with Brendan.

CONSTANTINE ALEXANDER: Tim?

TIM HUGHES: I had read this also and I agree with Chris that the actual change in the building by the definition in these guidelines, it's insubstantial. However, I am moved by Attorney Witten's argument that to reopen the record to insert the document which also goes to -- may go to a change in the financing program of this -- which is one of the things that -- it's still considered insubstantial. But I do think it's one of those things that probably should be a matter of public meeting. So I'm split on

the two things they're asking for. If they were split, I would grant one and I would deny the other --

CONSTANTINE ALEXANDER: What I would propose --

TIM HUGHES: -- but if they're going to come as a package, then I would say that this is a substantial change.

CONSTANTINE ALEXANDER: I'm going to make two motions and take each item whether it's substantial or insubstantial. Your point well taken.

Ready for a vote or further discussion?

CHRISTOPHER CHAN: Hold it.

CONSTANTINE ALEXANDER: Sure. Go ahead.

CHRISTOPHER CHAN: I agree I should not have been talking about both the things, but I'm talking about -- I was really talking about the movement of the building, the movement of the foundation

wall, the movement of the ramp. The second part of this, you're suggesting is substantial because it could impact the financing of the project?

TIM HUGHES: Well, I'm -- I think it's the argument that Attorney Witten made was that it's reopening the record that was a public meeting without it being a public meeting or an announced public meeting or a posted in public meeting.

CONSTANTINE ALEXANDER: The public comment has been closed.

ATTORNEY PETER FREEMAN: The --

CONSTANTINE ALEXANDER: Sir.  
Excuse me, sir. Public comment has been closed.

ATTORNEY PETER FREEMAN: I have no problem with you doing a separate vote.

CONSTANTINE ALEXANDER: Did you not hear me?

ATTORNEY PETER FREEMAN: I apologize.

CONSTANTINE ALEXANDER: All right.  
No further comments, please.

CHRISTOPHER CHAN: Well, I -- if it were me, I guess the question is whether it's establishing whether it's reopening the record. If it clearly was a housekeeping mistake, you know, I don't believe that there would be any change -- you know, possible change in the financing because we put the letter in the file. I guess that's my -- and I think I agree with Brendan on that, that it seems a shame a clerical error ends up clouding our decision before it. You know, if we reopen the whole file because someone didn't put that letter in, no, there's other things besides not being a housekeeping mistake, that's a different story. But if it was purely that, I think that would be sad. So I would probably vote insubstantial on both counts.

CONSTANTINE ALEXANDER: Before

making the motion and taking the vote, am I correct this is a majority vote not a supermajority vote, Sean? I believe you need three, three out of five to carry the motion as opposed to four for a variance or a Special Permit. My recollection on comprehensive permit cases -- and this I'll take your views on that.

ATTORNEY PETER FREEMAN: I appreciate that. Yes, that's correct, it's just a majority.

CONSTANTINE ALEXANDER: A majority. I think all comprehensive permit cases --

ATTORNEY JONATHAN WITTEN: And I would agree, Mr. Chairman.

CONSTANTINE ALEXANDER: Ready for a motion?

The Chair will move to grant petitioner's request to modify the comprehensive permit previously granted in this case to allow a relocation of a

portion of the garage and foundation wall so that it will be setback four feet from the property line of the property owned by Rink Realty Trust as shown on the attached revised site plan entitled, "Schematic Site Plan," dated 5/8/08 and revised 6/23/09, with the corresponding changes in the building. Such schematic site plan being part of our public record and submitted by the petitioner.

All those in favor of granting the motion or approving the motion at this change is insignificant, please say "Aye."

(Aye.)

(Hughes, Sullivan, Chan.)

CONSTANTINE ALEXANDER: Three in favor.

Opposed?

(Show of hands.)

CONSTANTINE ALEXANDER: Two opposed. The motion carries.

(Alexander, Scott.)

CONSTANTINE ALEXANDER: So the comprehensive permit will be modified with regard to the relocation of the garage.

The Chair also moves that petitioner's petition to modify the previously granted comprehensive permit so as to incorporate by reference into the permit a project eligibility letter dated May 14, 2008 from the Commonwealth of Massachusetts Department of Housing Community Development under the low income housing tax credit program, a copy of this letter being introduced into the record and as part of our files.

All those in favor of believing that this -- vote in favor of the motion to say that this is an insubstantial change, please say "Aye."

(Aye.)

(Sullivan, Chan.)

CONSTANTINE ALEXANDER: One, two.  
Two in favor.



Those opposed?

(Show of hands.)

(Alexander, Hughes, Scott.)

CONSTANTINE ALEXANDER: One, two, three opposed. That motion does not carry.

So I think that's it for the case. If you want to pursue the matter of the comprehensive -- of the letter, you're going to have to file.

ATTORNEY PETER FREEMAN: Just so you know because I don't -- under the regulations which you have the copies of, you now have to schedule a hearing within 30 days. And if it helps as you did with your previous applicant if we can both, Mr. Witten and my schedule, we can find a date that's convenient for everybody.

CONSTANTINE ALEXANDER: It's not a case heard.

CHRISTOPHER CHAN: It's not a case heard.

CONSTANTINE ALEXANDER: No. I guess we'll have to find room on our agenda. 30 days would be sometime in August. Can I ask, can I request that the parties give us a waiver of time for routine decisions?

ATTORNEY PETER FREEMAN: Oh, sure. I still would like to schedule tonight.

CONSTANTINE ALEXANDER: We'll schedule tonight.

ATTORNEY PETER FREEMAN: Absolutely because it's a time pressure and the summer and all that.

CONSTANTINE ALEXANDER: So, why don't we just -- do you need sometime. Do you want to recess this case and go discuss it with Mr. Witten?

ATTORNEY PETER FREEMAN: No, I mean I --

CHRISTOPHER CHAN: What are the options?

CONSTANTINE ALEXANDER: What dates

do you have?

ATTORNEY PETER FREEMAN: The soonest date that you have.

CHRISTOPHER CHAN: What are the dates?

SEAN O'GRADY: We have a meeting August 13th, that would be within the 30 days.

CONSTANTINE ALEXANDER: Do we have room on the agenda for it?

ATTORNEY PETER FREEMAN: You also have to notify the abutters 14 days so the -- you have time. Yes.

SEAN O'GRADY: You would have time on that agenda, yes.

CONSTANTINE ALEXANDER: On the 13th. And then the next one would be September --

SEAN O'GRADY: September 10th. But I think you may actually find that you have less time on September 10th than you have on August 13th.

ATTORNEY JONATHAN WITTEN:

Mr. Chairman, for what it's worth and I appreciate the conversation, I'm away until August 15th. So I couldn't make the 13th.

CONSTANTINE ALEXANDER: Well, we're going to need your brother's --

ATTORNEY PETER FREEMAN:

Unfortunately, this always happens, I apologize, but around the September 10th date I think you said is, I've got, you know, some trials out of town.

CONSTANTINE ALEXANDER: How about the 24th, the next is the 24th?

ATTORNEY PETER FREEMAN: Of August?

CONSTANTINE ALEXANDER: September.

ATTORNEY PETER FREEMAN: Well, I -- it's tough for us to push it out that late. And I'll tell you very candidly we've got the trial coming up, you know, with these plaintiffs in early October.

So I'm kind of loathed to wait that long.

CONSTANTINE ALEXANDER: There we are. Without his permission we have to do it within 30 days.

ATTORNEY JONATHAN WITTEN: Understood. If you don't have the extension, then we'll deal with it, you know, the best we can.

ATTORNEY PETER FREEMAN: I'm sorry if that happens, but you couldn't do a special meeting like August 27th or something?

SEAN O'GRADY: That's the -- we've specifically cleared the calendar for that date.

CONSTANTINE ALEXANDER: We have problems with scheduling, getting members together at that time of year.

ATTORNEY PETER FREEMAN: I can appreciate that. But I didn't know if the people here know their schedules.

TIM HUGHES: I know for a fact

that I'm not available.

CHRISTOPHER CHAN: Neither am I.

CONSTANTINE ALEXANDER: September 10th? Go back to September 10th or the 24th. It's too close to your scheduled trial.

ATTORNEY PETER FREEMAN: I just can't do it because I'm out of town.

CONSTANTINE ALEXANDER: Oh, I'm sorry, you're right. You said you're out of town.

ATTORNEY PETER FREEMAN: I know it's a special night but again September 3rd?

CONSTANTINE ALEXANDER: We don't usually have hearings just for one case out of our usual sequence. We usually almost always meet the second and fourth Thursday of each month except in August because we don't have a fourth Thursday.

ATTORNEY PETER FREEMAN: Maybe if we can have a recess for two minutes for

me to talk to John because I hate to put anybody on the spot.

CONSTANTINE ALEXANDER: Sure.  
Actually, a recess, the case is over.

ATTORNEY PETER FREEMAN: I don't want to lose you. We'll come back whenever your next break is.

CONSTANTINE ALEXANDER: Come back when you're ready. We'll move on to the regular agenda.

(7:45 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Christopher Chan.)

CONSTANTINE ALEXANDER: We'll now proceed to the regular agenda, and the first case on our agenda is 9816, Nine Ash Street.

Is there anyone here wishing to be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: I guess

there is no one here wishing to be heard on that case. Again, I guess there's no one here to be heard on this case?

MALE AUDIENCE MEMBER: I'm here.

CONSTANTINE ALEXANDER: Are you the petitioner? Are you Harvard University?

MALE AUDIENCE MEMBER: No. I am but I'm not.

CONSTANTINE ALEXANDER:  
Unfortunately we do not have a sufficient quorum to hear that case tonight. We need at least four members because to grant relief you need at least four votes, and of the five of us sitting here tonight two of us can't sit on that case. We have conflicts of interest, we have to recuse ourselves. So the case is going to be continued.

MALE AUDIENCE MEMBER: That's what we'd like to discuss with you.

CONSTANTINE ALEXANDER: Okay. Let



me read into the record the letter and then we can talk about the continuance. We do not want to get into the merits.

MALE AUDIENCE MEMBER: I understand.

CONSTANTINE ALEXANDER: The Chair is in receipt of a letter -- okay, two of them? Yes. They're duplicates. I'm sorry.

The Chair is in receipt of a letter addressed to Mr. Ranjit Singanayagam dated July 20, 2009 from the University Planning Office of Harvard University. "On behalf of the President and Fellows of Harvard College, I'm writing to request a continuance of our Zoning variance application hearing due to the Board of Zoning Appeal's inability to obtain a quorum to hear our case as originally scheduled for July 23, 2009. We respectfully request that our case be continued to the Board's August 13th

meeting. If you have any questions give me a call." And it's signed by Mark Verkennis, V-e-r-k-e-n-n-i-s, Senior Campus Planner.

Okay. We're going to discuss the question of the continuance, though we have no choice if we don't have a quorum. But come forward, please. If you have something you wish to put to the record, come forward, name, address.

RICHARD DE NEUFVILLE: Right. So, I'm Richard de Neufville and I'm on the --

CONSTANTINE ALEXANDER: Do you want to spell that name just for the record.

RICHARD DE NEUFVILLE: Oh, sure. D-e N-e-u-f-v-i-l-l-e.

So I'm on Acacia Street. Ten Acacia Street, and I'm here with an abutter Susan Pierce who is right on Ash Street. And I've been speaking with some of the members. And I think that we're generally

in favor of this particular historic residence being taken care of, but there are a number of issues which are of concern and we'd like to be able to talk about, but the middle of August a lot of people won't be around. So we'd like simply like to have the hearing but in September.

CONSTANTINE ALEXANDER: Okay.

What dates are available in September? I think you said the 10th is a pretty bad day.

SEAN O'GRADY: Yes. In good conscience I have to point out that a few things I guess, they're not being heard because of our lack of a quorum.

CONSTANTINE ALEXANDER: That's true.

SEAN O'GRADY: They were dismayed at that and requested the next available. I looked at the agenda, and not prejudging, but did tell them that August

13th looked like it was going to be acceptable.

CONSTANTINE ALEXANDER: Okay.

SEAN O'GRADY: They have not shown up I think based on that assertion just to put that out there.

CONSTANTINE ALEXANDER: Yes, I didn't mean that we are going to immediately continue that case that date. I wanted to get everything on the record.

RICHARD DE NEUFVILLE: Well, part of the issue is the fact that not many people have been notified, and people have been notified have been away. Effectively there's been very little notification and people have just heard about it. So there hasn't been a chance for people to discuss it. And a lot of us are in fact going to be away in the middle of August. Myself and Ms. Pierce in particular. So I understand that they wanted something immediate, but on the other hand, they've

been cooking this for sometime according to Larry Tribe. I have a letter from him here. And it seems to me just fair that we have a chance to all get together around it.

CONSTANTINE ALEXANDER: You realize you can submit your views in writing? You can -- if you can't be here, many people give us letters, petitions, what have you.

RICHARD DE NEUFVILLE: Well, I don't think -- I mean, part of the issue as far as I'm concerned, and I think I'm speaking for others, I don't really feel that I alone want to talk about it. I think this is something for everybody, there's problems with parking, problems that they want to run a guest house effectively. Which, as you said, we don't want to get into the details of it, it's not appropriate for right now, but we'd like a chance to discuss it ourselves and

sort of work it out in an equitable way. So I think doing it in September would be appropriate.

CONSTANTINE ALEXANDER: Have you spoken to any of the Harvard officials about your --

RICHARD DE NEUFVILLE: Yes, I have.

CONSTANTINE ALEXANDER: And did you ask to have the case in September?

RICHARD DE NEUFVILLE: No, I didn't have the chance to do that. I'd ask them for information about it. And they said oh, I'm sorry, we hadn't actually notified very many people. I guess we'll have one of our staffers notify -- well, walk around and deliver letters sometime in the near future, and that was the day before yesterday. And I was, you know, I was talking to the people. So there really hasn't been much notification or much chance for

discussion. So this is an important thing on a fragile neighborhood next to this big institution, and we'd just like a chance to do it right. And I don't think that -- I personally am not blaming anybody, but in effect I don't think doing it a little bit by surprise which we would have been today, but in the middle of August when people aren't around, is the way to do it right. So that's why I'm suggesting sometime at your convenience or to be in September.

BRENDAN SULLIVAN: Mr. Chairman, if I might chime in.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: I think that as looking to August and having a hearing and having some correspondence in the file basically people saying we have questions, we don't have answers and we could open up the case, spend an hour, an hour and 15 minutes with it, continue it because they

haven't had proper dialogue with the neighbors. And I'm not sure if that serves the public good very well and it sort of doesn't serve our time very well either. So that I would sort of agree with the gentleman that in the interim between now and sometime in September that that dialogue happens so it doesn't have to happen here. And then be continued.

CONSTANTINE ALEXANDER: Well, let me just say by the way, I'm one of the persons who cannot sit on this case. So I'm not going to -- I'm going to abstain on the continuance vote.

CHRISTOPHER CHAN: Then we won't have enough to have the continuance.

CONSTANTINE ALEXANDER: No, no, you have a quorum. All you need is three for a vote to continue. You and I can't sit on -- you may choose to vote. I'm going to choose not to vote. I think it's an extension of the decision to recuse



myself generally. So, I mean that's fine.

RICHARD DE NEUFVILLE: Do you want to say anything, Susan?

BRENDAN SULLIVAN: So if I hear that you cannot express an opinion, what are we talking about?

CONSTANTINE ALEXANDER: I mean, you have at least Tom and Tim and possibly Chris who might want to voice an opinion.

BRENDAN SULLIVAN: Okay.

THOMAS SCOTT: I'm listening to the gentleman and, you know, I fully understanding your situation. We actually don't have an additional meeting in August for just that reason that he's talking about. So, I don't see any reason why we shouldn't continue this to September.

SEAN O'GRADY: I don't think we can. I don't think we have a waiver in the file.

CONSTANTINE ALEXANDER: We don't have a waiver in the file?

BRENDAN SULLIVAN: What is the --

CONSTANTINE ALEXANDER: I should explain. Unless we have a waiver from the petitioner, we have to decide the case by 65 days from the day decision -- the application was filed. Or if we don't, it's automatically granted. That's a matter of state law.

RICHARD DE NEUFVILLE: 65 days.

CONSTANTINE ALEXANDER: From the day I think the application is filed with us?

SEAN O'GRADY: Yes.

RICHARD DE NEUFVILLE: That was, that was sometime about the middle of July?

CONSTANTINE ALEXANDER: I'll tell you in one second.

SEAN O'GRADY: There should be a blue date stamp right in the upper right-hand corner.

CONSTANTINE ALEXANDER: Yes, but

it's dated -- oh, June 25th. I thought it was July 23rd. June 23rd it was filed.

CHRISTOPHER CHAN: It's got to be three or four weeks ago. It's got to be advertised.

CONSTANTINE ALEXANDER: So, you know, June 23rd, July 23rd. It's 30 days until today roughly. And it's not only deciding the case here, we've got to write up our decision and file it with the city clerk. It doesn't become official until the written decision is filed with the city clerk.

RICHARD DE NEUFVILLE: Well, it's interesting that if they filed it in fact on June 23rd, that nothing has -- people weren't notified. First I saw of it was about five days ago when a notice was posted.

CONSTANTINE ALEXANDER: Are you an abutter to the property or an abutter to an abutter?

RICHARD DE NEUFVILLE: Well --

CONSTANTINE ALEXANDER: I mean,  
the reason I ask --

RICHARD DE NEUFVILLE: Well, I'm  
within 150 feet of it. I don't -- it  
depends on -- I was told when I spoke to  
the -- I don't know about these things.  
But I was told when I talked to Sean --  
are you Sean?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: That's  
Sean.

RICHARD DE NEUFVILLE: When I was  
on the phone, that I was not officially an  
abutter. But I guess my neighbor who is a  
lawyer, it should be under -- we were all  
presumptive abutters under Section 40-A --  
Chapter 40-A, Section 17. I don't know  
from nothing about that but that's what  
she wrote down for me.

CONSTANTINE ALEXANDER: I was  
looking to see who got notified.

Now, the point I'm making, though, is that by statute certain people have to be notified in writing, get letters, and if that notification is not made to a person entitled to receive it, the decision is suspect. If not, it can be challenged. You know, the office -- the Zoning office takes good care to make sure everybody who is entitled to notice be given notice. And in addition there is a sign posted. As far as I know, the sign has been posted for anybody who in the neighborhood --

RICHARD DE NEUFVILLE: Yeah, it was posted about six or seven days ago now.

CONSTANTINE ALEXANDER: That's another issue.

RICHARD DE NEUFVILLE: It was withdrawn -- I mean, I looked at the file. I came down and looked at this file, because for example the application and

the description of it was not sent around to the abutters.

CONSTANTINE ALEXANDER: No.

RICHARD DE NEUFVILLE: And so for example, an abutters right here didn't know what it was all about actually because she had never seen this until I showed it to her around five, ten minutes ago. So I mean, I sort of hear you're saying that you have to have a meeting soon, but I'm also -- would like you to appreciate that it won't be a very full meeting and that might possibly require you to continue it for later on. I don't know how that works.

THOMAS SCOTT: Does the posting have to be placed when the application is submitted?

SEAN O'GRADY: Two weeks prior to today.

THOMAS SCOTT: Two weeks prior to today.

SEAN O'GRADY: I was there early last week and it was up.

THOMAS SCOTT: You were there last week?

SEAN O'GRADY: Early last week.

THOMAS SCOTT: Okay.

RICHARD DE NEUFVILLE: Yeah. It was withdrawn two weeks before and that was a Thursday and I don't know when it was posted.

CONSTANTINE ALEXANDER: So the issue is this, I think I got it right, is that we could -- I think the sentiment on the Board to continue until September, which would be more convenient for the abutters, but unless Harvard University concurs, that just doesn't work. It doesn't work in the sense that their relief would be granted to them automatically without our decision, even if this Board were to turn it down. So, without Harvard's consent we have to hear

the -- to extend the time, we have to hear the case and make our decision in the 65-day period which precludes us from going into September. Otherwise you're going to lose your case without even having a chance to be heard.

RICHARD DE NEUFVILLE: Yeah, because part of issue as far as we're concerned, is, among other things, I don't know how it works exactly. That's what we'd like a chance to talk among ourselves is they want to run a guest house. Which is not the kind of thing which is -- as I understand, permitted in a residential area. So --

CONSTANTINE ALEXANDER: Do you have any sentiment if you called up Harvard tomorrow and you asked for an extension until September, that they would say no? I mean do you have a sense that they are under time pressures to do this so quickly?



RICHARD DE NEUFVILLE: Well, the discussion with them, with Audrey Wong in particular, that's -- I don't know what her exact role is, but she's one of their lawyers for this kind of thing, is -- was very guarded, I guess, let's put it that way. So, we would raise concerns about the parking because the number of -- they say they only have 12 people there, but they can accommodate about 60 or 100. They say well, a guest house is not really a guest house. It's so forth. There were a number of things that I thought they were pushing very quickly and not permitting very much discussion. So I'm guessing with that attitude that they would not. If I were in their shoes, understand their attitude, I would not think that they would want to give a waiver. Which is part of what's bothering us because we'd like to be able to have some kind of discussion with them about

it.

THOMAS SCOTT: I would suggest that you get a letter in the file as quickly as possible with your reservations about the project.

RICHARD DE NEUFVILLE: And then --

THOMAS SCOTT: It will be read at the hearing.

RICHARD DE NEUFVILLE: I'm totally naive about all of this.

THOMAS SCOTT: It will be read at the hearing.

CONSTANTINE ALEXANDER: Yes. Anything that anybody who wishes to express to the Board, put it in writing, it will be read at the public hearing. But it will be part of the public record as Tom has pointed out. And the Board members do come in, we do read the files in advance of the hearing, and we do take into account the views of people who sit down and write letters pro or con. So you

will have a chance to have your views heard. What you won't have, of course, is the ability, if you're not here, to listen to what Harvard has to say or to debate the proposals back and forth. That's all I can tell you. What we could do -- we may have to continue the case -- well, I guess until the August date, and maybe you could prevail upon Harvard to give you an extension until September in which time in August, the August hearing, we would further the case until September. But again that would require Harvard's consent. Absent that consent, they'll get the relief they want and that's not what you want.

RICHARD DE NEUFVILLE: Well, not under the terms that they're offering it, yes.

CONSTANTINE ALEXANDER: Yes. So I don't know what other choice, and other members may have a thought, I don't know

what other choices we have.

BRENDAN SULLIVAN: There has to be --

RICHARD DE NEUFVILLE: Susan, is there something?

CONSTANTINE ALEXANDER: I'm sorry, if you want to speak, you just have to come forward.

RICHARD DE NEUFVILLE: I don't know if she does or not. I didn't want to cut her off.

SUSAN PIERCE: I don't have new material to add. I agree with the gentleman speaking.

BRENDAN SULLIVAN: If it has to be heard by August, then we can hear it on that night. We will take the tone of the letters that are submitted to us, if we feel that additional dialogue is necessary with the neighbors, then there may be a motion then to continue it to September. It's not a foregone conclusion that once

we open it that it will be decided that night.

RICHARD DE NEUFVILLE: You're not obliged to decide it?

CONSTANTINE ALEXANDER: Sean, let me ask you a question. It's not a matter of having the hearing in 65 days, it's actually deciding the case, isn't it?

SEAN O'GRADY: You have to have a decision in 65 days.

CONSTANTINE ALEXANDER: We couldn't do what you're suggesting in August.

BRENDAN SULLIVAN: Well, they would have to sign a waiver.

CONSTANTINE ALEXANDER: Yes, without Harvard's consent.

BRENDAN SULLIVAN: They would have to sign a waiver.

CONSTANTINE ALEXANDER: Right.

CHRISTOPHER CHAN: I think you have -- I'm not going to vote, but you

have to continue it to August.

CONSTANTINE ALEXANDER: Yes, I think that's right.

BRENDAN SULLIVAN: It will be called for August and we will take into account the letters, the correspondence, the feelings, sentiments of the neighbors. If you are here, fine. If you are not --

RICHARD DE NEUFVILLE: I can't be, yeah.

BRENDAN SULLIVAN: -- if you are not, then by letter form.

CONSTANTINE ALEXANDER: And you still have each the ability between now and August to persuade Harvard to continue the case further until September, in which case it would allow you, you and others to be here in person. If they won't do that and you can't be here in person, as Brendan has suggested you will at least have your views heard through written correspondence to the Board. And then the

Board may, as Brendan suggested, with the basis of that, and without the benefit of the ability to ask you questions about it, they may suggest to Harvard that the case be continued at the August 13th hearing. But again, if Harvard chooses not to do that, then the Board will vote, up or down, taking into account everything that's heard including Harvard's position that's where Mr. Sullivan's going with this.

RICHARD DE NEUFVILLE: So as a point of information, you would be -- maybe I'm totally wrong, I don't know. You would be able at that point to turn it down if you wanted to as a way of letting them petition again I suppose.

CONSTANTINE ALEXANDER: Well, if we turn them down, then they cannot bring the case back before us for two years unless they bring back a substantially different proposal with regard to the

project. They're in the penalty box for two years or anybody is turned down.

RICHARD DE NEUFVILLE: So, August 13th is make or break day basically?

CONSTANTINE ALEXANDER: Well, unless we get -- unless Harvard agrees to an extension beyond that date for the time of their decision based upon what they hear on the August 13th meeting from the Board members and based upon what the neighbors have said either in person or in writing as part of the file. They may choose and they may see which way the wind is blowing and they may choose to agree to a continuance in August. But they may not. And if they don't, the Board will reach a decision on that date.

BRENDAN SULLIVAN: Some of those people have legal standing. The abutters -- two abutters within 300 feet of the locus of the locality, people have legal standing then Harvard would think,



consider that if some people had some questions.

RICHARD DE NEUFVILLE: Well, that's what -- actually, that was what I was going to do. Because Sean, I'm sure he's right, I'm not questioning that, that we weren't notified because -- and then as you said, what other neighbors said --

BRENDAN SULLIVAN: There are people on that list who have been notified --

RICHARD DE NEUFVILLE: -- are different from the people who have legal standing? Is that what I'm hearing?

CONSTANTINE ALEXANDER: The question of legal standing is a little bit -- it's very complicated.

BRENDAN SULLIVAN: Legal standing --

RICHARD DE NEUFVILLE: I'm an engineer not a lawyer guy.

CONSTANTINE ALEXANDER: Briefly,

if you're an abutter, direct abutter, you're presumed to have legal standing. If you want to challenge a case in court, you're a person aggrieved by the decision. You don't automatically be conferred that. If you're not an abutter, you could have standing if your property is being specially affected by the decision that's being made but other people are not affected in the same way. In other words, if you're just a general citizen of the community living on the other side of town and you're not happy about this project, and you think it destroys property values, it doesn't affect your property value like it affects anybody else's, you're not likely to have standing, and your case will likely be thrown out of court. It gets a lot more complicated on standing if you're an abutter. I don't want to get into the merits of that. It's a judge's decision, not ours.

RICHARD DE NEUFVILLE: But I'm  
okay talking to you that's what I --

CONSTANTINE ALEXANDER: Oh, yes.

RICHARD DE NEUFVILLE: Thank you.  
Any other advice that you'd give me so I  
do things properly, or we do things  
properly?

CONSTANTINE ALEXANDER: Well,  
again, my advice would be -- two pieces of  
advice, my personal advice. One, is to  
get as much into the file before August  
13th as possible, in writing, e-mails,  
what have you. And the other is to try to  
talk to Harvard as soon as possible along  
the lines of getting relief, changes you  
want. And if not, at least getting  
Harvard to agree to extending the --  
continue the case further until September,  
or to give you more time to try to work  
something out with Harvard and it will  
give all of you chance to be here in  
person if you don't work things out with

Harvard.

RICHARD DE NEUFVILLE: There are a few who might be around, right. Thank you very much. Thank you for your patience.

CONSTANTINE ALEXANDER: Anything else further from members of the Board?

The Chair moves to continue this case until seven p.m. on August 13th on the condition that the sign be modified to reflect the new date, the August 13th date.

All those in favor of continuing the case on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER:  
Mr. Sullivan, Mr. Scott and Mr. Hughes in favor.

Any abstentions?

I abstain.

CHRISTOPHER CHAN: I'm not going to vote. I'm recusing myself.

RICHARD DE NEUFVILLE: Thank you,

sir.

CONSTANTINE ALEXANDER: Thank you.  
Motion's carried. The case will be  
continued.

SEAN O'GRADY: So, Brendan, Tom,  
and Tim, on that one, right?

CONSTANTINE ALEXANDER: Yes,  
that's right.

SEAN O'GRADY: And we agree that  
the majority rules on the continuance?

CONSTANTINE ALEXANDER: Yes.  
Majority rules on a procedural motion.

(Whereupon, a discussion was  
held off the record.)

(8:10 P.M.)

(Sitting members: Constantine Alexander,  
Tim Hughes, Brendan Sullivan, Thomas  
Scott, Christopher Chan.)

CONSTANTINE ALEXANDER: Why don't

we go back to the comprehensive permit case?

Have you worked out a time?

ATTORNEY PETER FREEMAN: Yes, we have. Thank you, and I appreciate your indulgence. And I wanted to accommodate the Board and Mr. Witten. We'll do it September 10th. That trial thing I have I can manage to get back here and I just think it makes the most sense.

CONSTANTINE ALEXANDER: Good.

ATTORNEY PETER FREEMAN: Because I didn't want to have it too much further, but again, I appreciate your working with us. Thank you all and Mr. Witten, and thank you.

CONSTANTINE ALEXANDER: Okay. So you'll put it on?

SEAN O'GRADY: September 10th.

CONSTANTINE ALEXANDER: Yes, there's no motion required for that.

SEAN O'GRADY: Now, with that

said, you still have to make a filing, correct?

ATTORNEY PETER FREEMAN: No, we don't. I'll work with you. I'll be happy to submit whatever supplemental stuff.

SEAN O'GRADY: Do you have a card?

ATTORNEY PETER FREEMAN: Sure, yeah. Technically we don't, but I'm happy to do whatever is necessary.

CONSTANTINE ALEXANDER: You will have to advertise this case.

ATTORNEY PETER FREEMAN: Oh, yes, it has to be advertised.

(Whereupon, a discussion was held off the record.)

(8:10 P.M.)

(Sitting members: Constantine Alexander,

Tim Hughes, Brendan Sullivan, Thomas Scott, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair will call one more continued case, Case No. 9569, 45 Foster Street.

Is anyone here on that petition?

(No response.)

CONSTANTINE ALEXANDER: Do we have anything in writing to request a further continuance?

SEAN O'GRADY: Not that I'm aware of.

CONSTANTINE ALEXANDER: We have a waiver of notice, so we're all set on that.

SEAN O'GRADY: Okay. My memory is that several weeks ago the petitioner came in and informed me of his intent to continue, and my memory and my practice would have been to tell him to show up, you know. I only take letters on the first continuance.



CONSTANTINE ALEXANDER: This case has been continued several times. This is a matter in litigation.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: And so I assume -- and we weren't prepared and the petitioner didn't want us to decide the case until the litigation had been resolved. So I think that's the basis we can assume he wanted a further continuance. I would do -- I would suggest, though, for the record that this case be re-advertised. We should continue it to some further date, future date, but also require the applicant to re-advertise the case. It's a case of some notoriety. It's been around for a long while, and I think it's just good practice to get a further public notice out. So, Sean, if you can, you know, I don't want it as part of any motion, but if you can advise the petitioner, we'd like to re-advertise this

case.

SEAN O'GRADY: Would you make a finding for me and direct me to do that then?

CONSTANTINE ALEXANDER: Sure. Make a finding? Okay, sure. Be happy to that. What's your suggestion as to a date to continue it to? No rush on this one.

SEAN O'GRADY: You're right.

CONSTANTINE ALEXANDER: Three months, four months?

SEAN O'GRADY: That would seem -- yes, right. We can go out as far as November 19th I have dates for.

CONSTANTINE ALEXANDER: How about sometime in October?

SEAN O'GRADY: October I've got the 8th or the 22nd.

CONSTANTINE ALEXANDER: This is a case not heard. Why don't we say October 22, seven p.m.

SEAN O'GRADY: Very good.

TIM HUGHES: Both of these aspects of this case have been heard, 45 Foster Street is a case not heard?

CONSTANTINE ALEXANDER: Yes, both of them. Actually, thank you, Tim, I moved too quickly. We're hearing actually for the record, two cases simultaneously, 9569 and 9626 both of which involve 45 Foster Street. And for which no one here is before us.

And the date, again, in October, Sean?

SEAN O'GRADY: October 22nd.

CONSTANTINE ALEXANDER: The Chair moves that this case be further continued until seven p.m. on October 22nd on the condition that the petitioner sign -- modify the signage, and notify the date of the new meeting. Waiver of notice already being in our files. And on the further finding that the petitioner be asked to re-advertise this case in view of the

substantial amount of time that's passed since the case was first advertised.

All those in favor of continuing the case to that day, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, case continued.

(Alexander, Hughes, Sullivan, Scott, Chan.)

(8:15 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9817, 1643 Cambridge Street.

Is there anyone here interested in that petition? Please come forward.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman and members of the Board. For the record, my name is James Rafferty. I'm an attorney with the law office of Adams and Rafferty located at 130 Bishop Allen Drive in Cambridge. I'm appearing this evening on behalf of the petitioner. Seated to my right is Ms. Linda Pinti, P-i-n-t-i. Ms. Pinti is

the managing trustee and a unit owner at the property. And seated to my left is James Blauch, B-l-a-u-c-h. Mr. Blauch is the project architect.

Mr. Chairman, this is a case involving a multi-family apartment building that was constructed in approximately 1969. It's on the corner of Cambridge Street and Trowbridge Street opposite the War Memorial Complex of the high school next to the well-known Skindarian block. And given the age of the building and the manner in which it was constructed, it has a balcony elements associated with it that are in significant decline. So the trustees have gone out to refurbish, and sought bids to refurbish and rehabilitate them. And in the context of doing so and in studying their options, they met with Mr. Blauch and have proposed a scheme that will allow for some greater utilization or functionality of these

balconies. In their current dimension the balconies project a mere 11 inches off the face of the building. The proposal here is to increase it approximately 20 inches to just about 30 inches. It's a 35 -- 36-unit building, 35 of which have balconies. There's a certain rhythm to the balconies. There's a series of double balconies that are approximately between 15 and 17 feet in length, a five stack, and then there are single balconies five on each side.

CONSTANTINE ALEXANDER: Is it front and back, too? Are there balconies in the back?

ATTORNEY JAMES RAFFERTY: Yes. The elevation will show that it's a mirror on the back. There are no side balconies.

We do have letters of support from the rear abutter, the Cambridge Ellis School. Across the street is an institution, as you know. Here's

correspondence from the Office of the Mayor.

CONSTANTINE ALEXANDER: Sam Seidel?

ATTORNEY JAMES RAFFERTY: No, he's the vice mayor.

CONSTANTINE ALEXANDER: Oh, okay.

ATTORNEY JAMES RAFFERTY: The Mayor is Ms. Simmons. And she's --

LINDA PINTI: Zophia Gajdos.

ATTORNEY JAMES RAFFERTY: Zophia Gajdos. She lives in the building, perhaps not a neutral observer, but who would like her views expressed.

So in the end this represents two issues from a dimensional perspective. A slight increase in the GFA represented by the change in the area of the balconies. So, the cumulative impact of all of these 35 balconies, the extensions is 836 square feet. That represents the additional amount of area contained in the balcony.



And in the front side there is front setback, a further extension. The building was built prior to the property being rezoned to residence C-1. So the current setback is slightly non-conforming. The setback here is measured to the midpoint of Cambridge Street. The requirement is that it be about 44 feet and it's only about 38 now. And this would represent about a 20-inch incursion into that. It would still be within the property line. There's no encroachment into the public way, but it does represent a further element of non-conformity.

There is one interesting aspect --

CONSTANTINE ALEXANDER: Also the rear setback issue isn't there as well?

ATTORNEY JAMES RAFFERTY: I would have thought the rear was okay.

CONSTANTINE ALEXANDER: I'm looking at your dimensional form. You

have to have 20 feet minimum setback in the rear. You have 14.

ATTORNEY JAMES RAFFERTY: Right. But the reality is that the building doesn't have a rear setback. It's a corner building. So it has two sides and two fronts.

CONSTANTINE ALEXANDER: Two front yards.

ATTORNEY JAMES RAFFERTY: Yes. So it's non-conforming on Trowbridge, but what would be considered the rear is actually a side. And the side requirement I think we're okay on. But....

CONSTANTINE ALEXANDER: Yes, according to your form. What about the --

CHRISTOPHER CHAN: Hold on a second. The form does have a rear in it. Are you reading the same thing we are?

CONSTANTINE ALEXANDER: That's what made me ask the question.

ATTORNEY JAMES RAFFERTY: Well,

right, the form does say rear because that's what the form says. But the elevation, the -- what do we call that? The south elevation is the front. The north elevation is the rear. But for purely zoning purposes, what feels like a rear, because it's a corner lot, is actually a side.

CHRISTOPHER CHAN: So are you saying that we ought to have 20 feet on the side and you only have -- are you asking for --

ATTORNEY JAMES RAFFERTY: I thought we weren't on the rear. But it's --

CHRISTOPHER CHAN: Well, side.

ATTORNEY JAMES RAFFERTY: Side, right.

TIM HUGHES: The rear side.

ATTORNEY JAMES RAFFERTY: Here's that side setback. Minus is that we made that. But now that I see it, it's a bit

of a pork chop lot. There probably is a portion where it doesn't comply to the side yard requirement. The side is also a form there.

LINDA PINTI: I believe we do have 20 feet.

JAMES BLAUCH: No, you don't.

LINDA PINTI: Not in the back, we don't?

JAMES BLAUCH: No, I did the calculations for the building permit application. And the -- for the side, the side yard setback requirement is 35 feet. We're at zero for the side yard. Taking the two -- the rear, we'll work on the rear or slash side and the other side yard. We have a zero foot setback on the side where you're on Cambridge Street, the right-hand side of the building is a zero setback.

CONSTANTINE ALEXANDER: But you're not putting any -- you're not putting

anything --

JAMES BLAUCH: No, we're not doing anything over there. But the wall that's opposite Cambridge Street, the back of the building, the north wall, the north wall, if we call it a rear setback, it would be 20 foot is what's required by the code.

CONSTANTINE ALEXANDER: Right.

JAMES BLAUCH: We are currently at 14 feet, six and a quarter inches.

CONSTANTINE ALEXANDER: Right.

JAMES BLAUCH: If you call it a rear yard.

CHRISTOPHER CHAN: What's required on the side?

JAMES BLAUCH: The side requirement according to my calculations is 35 feet.

CONSTANTINE ALEXANDER: You're not changing the side?

JAMES BLAUCH: No.

ATTORNEY JAMES RAFFERTY: No.

Well, we are changing the side to the extent that the rear is the side.

CONSTANTINE ALEXANDER: The rear is the side.

ATTORNEY JAMES RAFFERTY: There are two places on the building where the setbacks will change for sure. The setback front in Cambridge Street represents a greater non-conformity by those 20 inches. The C-1 side yard formula is height plus length divided by five. We have a 61-foot high building. We have the length of this building at -- I would say we probably would be safe to request relief to the extent that it's needed, and that, it's still the same. We have a greater separation, the abutter, again, an institutional abutter in that location, the school expressing support. It's 117 so. No, we're right in the middle of something else. So, yes, we'll need relief until I figure out -- 65 plus

117 divided by five. I bet Mr. Sullivan's got this figured out and he's just sitting there waiting for me to announce it.

BRENDAN SULLIVAN: You need relief.

JAMES BLAUCH: It's .46.1.

ATTORNEY JAMES RAFFERTY: It's 33 feet, right. And we have 30 plus feet. So we need relief on the side opposite Cambridge Street, because we're -- the elevation opposite Cambridge Street which is a side yard.

CONSTANTINE ALEXANDER: Right. Cambridge Street? I'm sorry, I'm confused.

ATTORNEY JAMES RAFFERTY: Opposite Cambridge Street.

CONSTANTINE ALEXANDER: Opposite.

ATTORNEY JAMES RAFFERTY: What feels to the untrained eye to be the rear of the building is required. So yes, the 19 inches -- it's 30. But, yes, it's the

-- when you do the formula calculation, it's 30 plus requirement for the side.

CHRISTOPHER CHAN: So we should change this form here --

CONSTANTINE ALEXANDER: That's what I was going to say. I want you to change your dimensional form.

CHRISTOPHER CHAN: Change it to side instead of rear.

ATTORNEY JAMES RAFFERTY:  
(Correcting Dimensional Form.)

So we have two fronts, Trowbridge and Cambridge. We're not changing the Trowbridge front. We do need relief from the Cambridge Street frontage, and we have two sides, we're treating the variance side as the right side. There's no change there. The left side by default would be the balance of the building and that's where the 19-inch extension represents a further non-conformity in the setback.

CONSTANTINE ALEXANDER: In your



supporting statement you said that -- you say that -- I'm sorry. You want to look at it?

CHRISTOPHER CHAN: Yes. You need to change the 20 feet to 33 is that what it is?

ATTORNEY JAMES RAFFERTY: H plus L plus 5 which I think 15 is 30 -- 36 I think. 36.

Did you say 36?

TIM HUGHES: I said 35.6.

JAMES BLAUCH: It's 35.6. I did that math.

ATTORNEY JAMES RAFFERTY: The show-off architect.

CONSTANTINE ALEXANDER: Well, while we're on the issue of exactly the relief you're seeking, in your supporting statement you said: Since this building exceeds the allowable amount of gross floor area for the lot, you need relief. But in your form, you don't say what the

existing total gross floor area is and what you're going to go to. So I'd like to know exactly where we are on that.

ATTORNEY JAMES RAFFERTY: We do now and we didn't. And that was brought to our attention. There was a supplemental dimensional form that was submitted which is probably in the file.

CONSTANTINE ALEXANDER: I don't see it in the file.

ATTORNEY JAMES RAFFERTY: I brought it in because Mr. O'Grady kindly contacted me and said that we didn't have it.

CONSTANTINE ALEXANDER: Okay. I'm going to write it in. Because that one doesn't consist with that one.

ATTORNEY JAMES RAFFERTY: Sure.

CONSTANTINE ALEXANDER: So right now you have 37,680 square feet, and the ordinance has a max of 7,886. And you're going to -- so obviously you're

non-conforming to a substantial amount and you want to add an additional 836 square feet.

ATTORNEY JAMES RAFFERTY: Correct.

BRENDAN SULLIVAN: Mr. Chair, on the supporting statements for granting relief you can continue with the reading of that.

CONSTANTINE ALEXANDER: Sure.

This is regarding whether -- how you comply with the requirement that there is a literal enforcement of the provisions of the ordinance would involve a substantial hardship, financial or otherwise to the petitioner.

Your statement is made: Since this building exceeds the allowable amount of gross floor area for this lot, even the modest extension of the balconies by approximately two-feet-six-inches requires a variance since the area of balconies above the third floor is included in the

definition of gross floor area.

BRENDAN SULLIVAN: It says  
two-foot-six?

CONSTANTINE ALEXANDER:  
Two-foot-six is what it says.

BRENDAN SULLIVAN: Okay. So we're  
going two 30 inches?

ATTORNEY JAMES RAFFERTY: Correct.

BRENDAN SULLIVAN: Okay. The  
addition isn't 30 inches, but we're going  
two 30 inches?

ATTORNEY JAMES RAFFERTY: That's  
right.

BRENDAN SULLIVAN: Now, if you  
continue along there again.

CONSTANTINE ALEXANDER: That's all  
there on that section. Then the hardship?  
You want me to read the hardship thing?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: With  
regard to the hardship the statement is  
made: The hardship is related to the

deteriorating condition of the balconies. Since the balconies are all being replaced, the objective is to make them slightly more functional than their current 11-foot depth.

BRENDAN SULLIVAN: Right there.

LINDA PINTI: 11 inch.

BRENDAN SULLIVAN: It's probably a typo.

ATTORNEY JAMES RAFFERTY: Mine says 11 inches because while the Chairman was reading it I changed it. I see where you might be confused.

BRENDAN SULLIVAN: While we're correcting the record --

CHRISTOPHER CHAN: You're actually increasing it by 120 inches; is that correct?

ATTORNEY JAMES RAFFERTY: Yes. It's 11.2 today and there's some slight variation, and we worked off the old construction drawings, and it's 19

something. So to be safe, we said 20 inches plus 11. And so the result is --

CHRISTOPHER CHAN: 31 inches is the total.

JAMES BLAUCH: The total including everything, which is the floor -- the wood decking sticking out passed the face of the balcony is two-foot-six and three-quarters per the construction. So if we called it 31 inches that would allow for the building to not be quite square everywhere.

CHRISTOPHER CHAN: Well, that's fine. You're increasing by 20 inches. Brendan found two things wrong.

ATTORNEY JAMES RAFFERTY: That's a B where I went to school.

CONSTANTINE ALEXANDER: By approximately 20 inches.

So you're looking for basically three forms of relief, the increase for total gross floor area and then intrusion

into setbacks front and certain side yard setbacks and the numbers we previously talked about?

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: And the elevation has been included in the drawings since five o'clock this afternoon?

ATTORNEY JAMES RAFFERTY: We have a larger form as well.

BRENDAN SULLIVAN: That was deficient earlier.

JAMES BLAUCH: It's consistent with the architect's records now.

CONSTANTINE ALEXANDER: This conforms to this it's just bigger --

JAMES BLAUCH: You can have that.

ATTORNEY JAMES RAFFERTY: Yes, it does. This is a bigger file. The rendering has been filed, and the project was reviewed extensively by the Mid-Cambridge Conservation District

Commission with regard to details, materials, the decking, the use of metal and the like. There's a change in this, I guess you might call it the fin see here. It doesn't represent the gross area, but it does have a slightly greater projection than the original.

BRENDAN SULLIVAN: So those elevations comply with their recommendations?

ATTORNEY JAMES RAFFERTY: Yes. And I want to draw to the Board's attention because this represents a setback issue, but not a gross area issue. There's an existing -- I know there's a better term than what's in there. There's an existing element like this now, but it's being replaced with a slightly longer element so it contains the same proportion.

JAMES BLAUCH: The drawings, the drawings, we call these side pieces fins.



So the fin right now sticks out the ten and a half to eleven and a quart inches depending on where you measure it. And we're looking to go out to the total balcony -- this is at the face of the balcony right now. The existing one --

ATTORNEY JAMES RAFFERTY: We want to maintain the same relationship between balcony edge and fin that exists now. If you look at the photo, you can see that.

CONSTANTINE ALEXANDER: And the plans reflect that? The elevations reflect that?

JAMES BLAUCH: It's not exactly what you said there. Right now the balcony and the fins are exactly the same length.

CONSTANTINE ALEXANDER: Right?

JAMES BLAUCH: Okay. Within three quarters of an inch. And so what we're looking to do is extend the fin out a little bit further because it's the

structural support, and the balcony goes out to a total of two-feet-six-inches. So there's a little wrap at the corners of the balconies. The fins are not -- they're not going out two-feet-six.

CHRISTOPHER CHAN: The relation's changing?

JAMES BLAUCH: Yes.

CHRISTOPHER CHAN: How much are they going to go out then?

JAMES BLAUCH: The fin increase is nine and one-eighth inch.

CHRISTOPHER CHAN: Instead of 20?

JAMES BLAUCH: Instead of 20.

CHRISTOPHER CHAN: This is not a Zoning issue.

ATTORNEY JAMES RAFFERTY: Well, it's a setback issue. But it's less of a setback incursion than the -- I just didn't want to find us in a situation where we granted setback relief for the balconies and not for the fins. The fin

will be in the setback but the balcony's going to extend beyond that. Is the fin element depicted on the elevation?

JAMES BLAUCH: Yes.

CONSTANTINE ALEXANDER: And the elevation you submitted earlier. And these fins also comply with the Cambridge District approval? Which I'll read this into the record at the appropriate time.

LINDA PINTI: We received a Certificate of Appropriateness.

ATTORNEY JAMES RAFFERTY: And it included the fins.

CONSTANTINE ALEXANDER: It included fins. Any further remarks you want to make at this time?

ATTORNEY JAMES RAFFERTY: Nothing.

CONSTANTINE ALEXANDER: Any questions from members of the Board?

I know we have letters that Mr. Rafferty has pointed out. I'll read them into the file. But first of all,

I'll take public testimony.

Is there anyone here interested in this case wishes to be heard?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

We are in receipt of letters from E. Denise Simmons, the Honorable Mayor of Cambridge, addressed to the Board. "I'm writing to express my strong support of the efforts being undertaken by the owners of the Cambridge House Condominium to extend the balconies of the Cambridge House which is located 1643 Cambridge Street. The residents of the Cambridge House currently own units with balconies measuring 11 inches wide. The balconies are currently too small to be used for their intended purpose. By adding on an additional 19 inches, these residents will be able to take full advantage of these balconies. Granting permission for this

extension sounds like a sensible request especially in light of the already existing need for repairs to be made to the balconies. The residents believe that an extension of the balconies will make the building more attractive, and it will add significant value to the property and the impact on the quality of life will be significant. Balconies build community in that they encourage folks to spend a little time observing their city, and the neighborhood and life around them. Those who spend time on their balconies as opposed to sitting inside will get the added benefit of getting some regular doses of fresh air and sunshine. In addition, these balconies will be utilitarian because they will allow for access to washing windows and they will also provide refuge in the event of a building fire."

LINDA PINTI: Refuge.

CONSTANTINE ALEXANDER: It says

refuse.

LINDA PINTI: I think she meant refuge. She's been pretty busy lately if you notice with this Gates issue.

CONSTANTINE ALEXANDER: "I understand that the abutters of the Cambridge House are supporting this extension effort, and I must join them in this support. I ask that you please strongly consider deciding in favor of granting this request, and I thank you for your time and attention."

There's a letter in the file from the office of the Vice Mayor Sam Seidel, S-e-i-d-e-l. "I'm writing in support of the Cambridge House Condominium Trust request for a variance to extend the building's balconies. The proposed 19 inch extension of the balcony from the current 11 inches seems modest and reasonable and will allow residents to fully use the space. It would also be

folded into the larger project of repair and replacing the current balconies. The new balconies will provide an outdoor space for residents to enjoy. Allow them to access windows and appliances for cleaning and repair, and also provide some measure of safety and refuge in case of fire since the building has no fire escapes. I understand that the building's abutters support the trust's proposal. And after review by the Mid-Cambridge Neighborhood Conservation District Commission that the MCNCDL granted the proposal a Certificate of Appropriateness. I ask as well that you give this request your full consideration."

There's a letter from the Cambridge-Ellis School at 80 Trowbridge Street. "Dear Zoning Board: We at 80 Trowbridge Street have no objection to balcony expansions at the apartment building on the corner of Cambridge Street and

Trowbridge Street."

And lastly, there's a letter from a Zofia Z-o-f-i-a -- I'm just going to spell the last name probably botch it otherwise G-a-j-d-o-s addressed to the Board. "I'm writing in support of the proposed balcony extension to 1643 Cambridge Street, Cambridge House. I'm a current resident at 1643 Cambridge Street, and I own my unit in conjunction with my parents. I strongly favor the modest balcony extensions. The balconies needed to be replaced and it makes no sense to me to replace them with fairly useless pseudo balconies when the cost to extend them is so minimal in comparison to the overall costs and necessary repair. A modest balcony extension would increase the quality of life for unit holders and residents, as well as increased property values. Additionally, because our building has no exterior fire escapes,



balconies could also be a potential refuge or an escape mechanism in the case of a fire."

And I'll also read into the record the fact that -- or notes for the record as noted in one of the letters, that the Mid-Cambridge Neighborhood Conservation District Commission has granted a Certificate of Appropriateness to this project. The Certificate contained a recommendation with regard to the projection of the existing fins, and I understand that your -- the plans before us comply with that recommendation?

JAMES BLAUCH: I'm not positive about that.

LINDA PINTI: Well, I think that what is clear is that the rendering -- what the plan is the slightly -- the rendering makes it look like the balconies are going to stick out further than they really are.

CONSTANTINE ALEXANDER: Well, when we approve, we will approve in accordance with these plans. And I want to know whether these plans that if we do so approve are going to accept -- reflect the recommendation of the Mid-Cambridge Neighborhood Commission. Do they or do they not?

LINDA PINTI: I'm not sure.

ATTORNEY JAMES RAFFERTY: Well, the recommendation is to not more than double the projection of the existing fins.

LINDA PINTI: Yeah.

CONSTANTINE ALEXANDER: And to keep the new balconies at least one inch behind the fins.

LINDA PINTI: They accepted the first. I'm not sure they accepted the second.

JAMES BLAUCH: The projection of the balcony is further than one inch

passed the --

CONSTANTINE ALEXANDER: Is there any reason why you couldn't comply with the recommendations from the Mid-Cambridge?

LINDA PINTI: Well, we cantilever out --

JAMES BLAUCH: The fins can't --

LINDA PINTI: The fins cannot go out --

JAMES BLAUCH: The fins are at the maximum length right now. So if the fins are held to the dimension that they're at right now, the balcony would -- that would be -- let's see, we're at nine and an eighth inch. And the balcony would be at ten and one-eighth. It would be one inch larger. That would be less than half the depth of the balcony. You lose ten inches of the balcony. So the two-foot-six useable dimension would shrink by ten inches. So you couldn't really put a

little cafe chair and a cafe table out there.

ATTORNEY JAMES RAFFERTY: It would only represent a three-inch extension of the balcony.

CONSTANTINE ALEXANDER: Just out of curiosity, was there a public hearing for the Mid-Cambridge?

LINDA PINTI: Yes.

JAMES BLAUCH: Yep.

CONSTANTINE ALEXANDER: Was this point made to them? How did they get to this recommendation if they --

JAMES BLAUCH: I didn't actually attend the meeting.

LINDA PINTI: I did.

CONSTANTINE ALEXANDER: Okay.

LINDA PINTI: Let me just say that there was disagreement on the part of the circle commission on some of the finer points, and this was one of them. There was a -- the majority -- I mean, there was

the vote that resulted in the Certificate of Appropriateness. But there wasn't -- there were some different ideas, stylistic, artistic with regard to what they liked and what they didn't. The overall idea they went for. I recall, you know, one woman said were I a member of your building, I would want that balcony as you're presenting it, but as a member of the Historical Commission, I might say this. But -- so I don't know if -- I mean, this doesn't reflect that there was a split vote in certain aspects.

CONSTANTINE ALEXANDER: I wouldn't know. It doesn't say on the condition. The Certificate is not granted on the condition that you do this, but on the recommendation which is much softer.

LINDA PINTI: On the recommendation.

ATTORNEY JAMES RAFFERTY: Right. And it also happened for jurisdictional

purposes, if you look at the next paragraph, it's a non-binding certificate because of in this area. So, I think there was an effort to encourage that, but I think what we've heard from Mr. Blauch is that there's a structural limitation that if that were complied with, it would almost render the increase in the balconies so minimal that it would provide little benefit to the overall objective.

CONSTANTINE ALEXANDER: Okay.

Questions or comments from members of the Board?

You haven't addressed the special condition, the second requirement for a variance. The hardship has been identified in these letters. What are the soil conditions, shape of the lot, etcetera that -- we need to define to grant the variance you're seeking.

ATTORNEY JAMES RAFFERTY: Well, the lot itself does have an unusual shape

in the sense that the setbacks change significantly. They step back in the side differently, it's on a pure rectangle. It's not a question of the topography so much as the fact that the way the building is cited on the lot, there is the total absence of open space. And the only thing in -- the building actually becomes more conforming in terms of the usable open space requirements, because while it's also an increase in square footage, it also represents an increase in open space. And there is a 25 percent requirement in this district to do that. But a 30 percent requirement. But the lot size is impacted by a -- the fact that it has two fronts. So it's faced with two unusual setbacks. And the fact that the building itself sits on a lot that has a shorter rear.

CONSTANTINE ALEXANDER: And the building is a legal non-conforming

structure?

ATTORNEY JAMES RAFFERTY: Sure.  
It was built in 1968.

LINDA PINTI: Nine.

ATTORNEY JAMES RAFFERTY: And the  
Zoning changed here in about '84 or '85.

THOMAS SCOTT: Will there been any  
restrictions for the use, for instance, I  
worry about people storing stuff out there  
like their bicycles or over populating  
them with planters and -- I mean it  
just....

ATTORNEY JAMES RAFFERTY: Yes. I  
don't know if the condo by-laws today  
speak to that. It might be --

LINDA PINTI: Our by-laws, even  
though the current full balconies are  
pretty useless, our condos docs do address  
explicitly, you know, no cooking and that  
will continue. And we are in the process  
of working through a series of regulations  
before they're built, they will be, you



know, pretty strict and will be handed out and everyone will know. So it won't be a free for all that you're concerned about. We aren't going to hang laundry out there and, you know, we want to improve the look of the neighborhood.

THOMAS SCOTT: I just worry about storage and kind of over populating the balconies with things that probably shouldn't be out there, you know.

LINDA PINTI: Probably too that's an issue for any building in Cambridge with balconies.

THOMAS SCOTT: These are pretty prevalent on Cambridge Street.

LINDA PINTI: Again, these are small, so just by virtue of the fact that they're small we're not going to allow a tremendous amount of use for storage.

CONSTANTINE ALEXANDER: I think what Mr. Scott is suggesting though, since you're asking for relief from us, there

may be a prevalent problem on balconies in Cambridge generally. The fact of the matter is that, you know, those balconies are there in compliance with those Zoning By-Law. You're asking us to vary the Zoning By-Law.

LINDA PINTI: Right. Our condo docs already have significant restrictions about you can't hang things out there. You can't cook out there. You can't -- of the present ones. And so we will add additional restrictions so that we don't run into what you're suggesting. I think we're sensitive to that issue.

JAMES BLAUCH: I think one of the things that you have to remember, too, I don't live there, I work with the condominium association for a while, there's a lot of residents that have been living there for 15, 20 years plus. It's their home and, you know, they've been living there longer than they have any

place else. There are a few rental people in the building. But by in large at least half of the people are living there own the units. So it's not like a rental place. I mean, there are some rental units. It's a little bit different than if you just had rental housing, where you have a turn over of students come in every year and there's a different one. It doesn't seem to work that way over there. It's more of these people live here. So I wouldn't, from my perspective as an architect, and as a person that's been around a little, I wouldn't expect to see the balconies just where they're just sort of littered with stuff.

CONSTANTINE ALEXANDER: Please if you want to be heard, come forward and give your name and address to the stenographer.

WILSON WONG: I'm Wilson Wong. I'm at 1643 Cambridge Street. I have unit

No. 76. I just wanted to state my support for the fact that in any change of the condo by-laws, I would definitely support that there not be all sorts of stuff on the balconies. I have lived there since 1998, and although I am interested in the extension, it's strictly to just be able to actually go out and make use of that area for a short period of time, and to not clutter that. And I would strongly support that all the units not clutter their balconies.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: The section two balconies.

JAMES BLAUCH: Yes.

CONSTANTINE ALEXANDER: I didn't hear your question.

THOMAS SCOTT: He asked for a section.

CONSTANTINE ALEXANDER: Oh.

JAMES BLAUCH: These are prepared

-- this is -- what you're seeing there's another sheet which shows existing balconies. This was in essence drawn over the top of the construction drawings. So you can see this piece here is existing from the building. And then this is what we're adding. That's the information that I drew in. So you can see the existing building all around. The windows. And they're standing out. Framing members.

BRENDAN SULLIVAN: Those are going into the fins? The fins.

JAMES BLAUCH: The fins are the structural members. You can see the piece of the fin here. The fins are in essence carrying the building down and transferring them back.

BRENDAN SULLIVAN: Right. So that commentary just doesn't work. And I don't think that they realize that.

JAMES BLAUCH: No, I don't -- I didn't attend that meeting. So I don't

think -- if I had been there, I would have explained the fact that if you're trying to do --

BRENDAN SULLIVAN: It's an aesthetic thing but it cannot be built that way.

JAMES BLAUCH: Yeah. If you build it that way, if you followed one piece of it, you would lose the usefulness of the balcony.

BRENDAN SULLIVAN: That's correct.

JAMES BLAUCH: If you send the fin out a lot further, it's too big then. At that point it becomes too big.

BRENDAN SULLIVAN: Right.

JAMES BLAUCH: And we had a big attempt -- we worked with Dave Burg, he's the structural engineer. And we worked with him a lot the fins. And there's that dimension seemed to be the right dimension for carrying this along.

BRENDAN SULLIVAN: So the fin is

actually back ten inches?

JAMES BLAUCH: Yes.

BRENDAN SULLIVAN: Ten and three-eighths?

JAMES BLAUCH: Yes.

BRENDAN SULLIVAN: So the outside double two-by-eights are going to be cantilevered basically?

JAMES BLAUCH: Yes.

BRENDAN SULLIVAN: And then that's these two here which actually are the support of the fins.

JAMES BLAUCH: Yeah. What happens is the railing is exposed at the edge a little bit and turns back. It creates a C shape.

BRENDAN SULLIVAN: All right. I'm satisfied that irrespective their commentary on fins that this is the way it has to be built. So, if we buy, we accept the extension to the balconies, then the fin follows along with it.

CONSTANTINE ALEXANDER: Brendan, when it comes time to make a motion, obviously we'll tie it to the plans. Do you want those plans also as part of the record?

BRENDAN SULLIVAN: Yes, I would note --

JAMES BLAUCH: You can have the whole set of drawings if you like.

BRENDAN SULLIVAN: It's that one there. That's the one that we're going to put the guidelines basically. That shows relationship of the balconies to the fins.

JAMES BLAUCH: On the face of the brick.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: Questions or comments from members of the Board? I think we're ready for a vote.

The Chair moves to grant a variance to the petitioners with respect to their proposal to extend the balconies on the



grounds that a literal enforcement of the provisions of the Zoning Ordinance would involve a substantial hardship to the petitioner.

The hardship being that these balconies in their current form are both not functional in terms of providing acceptable outdoor living space and are in need of significant repair. And, therefore, an appropriate time to improve the balconies for purposes of the structure is now.

That the hardship is owing to circumstances relating to the fact that this is a non-conforming structure.

That it sits on a lot that is somewhat unusual in size. It is a corner lot.

And further, on the basis that -- I had a thought and I lost it. A corner lot -- and the sighting of the structure on the lot itself makes compliance with all

the setback requirements very difficult.

That relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the ordinance. In fact, the relief being sought is relatively modest in nature. Just a slight setback intrusions and a slight increase in the gross floor area.

That there is substantial community support beyond the people who live in the building from city officials and abutters.

The variance will be granted on the condition that the work proceed in accordance with two sets of plans, one numbered A-5 prepared by Eisenberg Haven Architects bearing a date of March 27, 2009 and initialed by the Chair. And further in accordance with another drawing, A-7 prepared by the same architectural firm bearing the same date, and also initialed by the Chair.

All those in favor of granting the variance on the basis so proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion granted.

(Alexander, Hughes, Sullivan, Scott, Chan.)

ATTORNEY JAMES RAFFERTY: Thank you very much.

(Whereupon, a discussion was held off the record.)

(8:50 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9818, 269 Upland Road.

Is there anyone here on that matter? Please come forward.

Please, for the record, as you know, give your name and address for the stenographer.

ATTORNEY DENNIS BENZAN: Good evening, Mr. Chair and fellow Board members. I am Attorney Dennis Benzan from the firm of Altman and Altman representing Matthew Pearl and Tobi Pearl who is to my right. I reside at One Pine Street in Cambridge.

THE STENOGRAPHER: Spell your last name, please.

ATTORNEY DENNIS BENZAN: Sure.

B-e-n-z-a-n.

And to my left is Anne Snelling-Lee who is the architect.

ANNE SNELLING-LEE: I reside at Nine Pond Street in Boston, 02136.

THE STENOGRAPHER: Spell your last name, please.

ANNE SNELLING-LEE:  
S-n-e-l-l-i-n-g.

CONSTANTINE ALEXANDER: You're here seeking a variance for dimensional relief.

ATTORNEY DENNIS BENZAN: That's right. Setback.

CONSTANTINE ALEXANDER: Setback. Okay, would please tell us in a little more detail what it's about?

ATTORNEY DENNIS BENZAN: Sure. We currently have a building that's undergoing substantial renovation. There is primary staircase. When you reach the third floor landing, there is not enough

head room for you to actually pass without bumping your head if your a person that's above five-four. So we're requesting relief so that we may build a dormer within the same footprint. If you look at the drawings, there is a -- currently a bay area within that location where the staircase is going to be constructed, and at the very top, as I said, you bump your head. The third floor will give you access to an office, a bathroom and a bedroom. So in order to improve the functionality of the staircase, we're requesting relief to build a dormer that is going to look very similar to a bay area that's on the left side of the building.

CONSTANTINE ALEXANDER: And this dormer sits in the front yard setback and that's why you need zoning relief?

ATTORNEY DENNIS BENZAN: Right side yard.

CONSTANTINE ALEXANDER: Right side yard.

ATTORNEY DENNIS BENZAN: Yes.

CONSTANTINE ALEXANDER: I don't see anything in the file that indicated it has side yard issue.

ATTORNEY DENNIS BENZAN: Currently I believe the setback is about 3.2 feet.

CONSTANTINE ALEXANDER: It says no change in the form, that's the reason I ask.

ANNE SNELLING-LEE: Yeah. There's actually a dormer already on the roof.

CONSTANTINE ALEXANDER: Right.

ANNE SNELLING-LEE: But it's just actually lower than at the ridge line. It drops below the existing fascia that runs around the house and the gutter.

CONSTANTINE ALEXANDER: Right.

ANNE SNELLING-LEE: And so we just want to lift it up so it picks up at the same height.

CONSTANTINE ALEXANDER: My only question is and it's a technical one, is why does this dormer need zoning relief? Your form would only indicate it has to be in the front yard setback and you're violating that. So otherwise -- I know you have an issue with the front porch. We're going to get to that. But why again, why the dormer?

ATTORNEY DENNIS BENZAN: Well, it all depends on how -- I guess the dormer has to be built off the same roof line, and there was an issue in discussing this with zoning as to whether or not we would need relief, and we came to the conclusion that we would -- it was best that we sought relief from the Board because the dormer is so close to the property line on the right.

CONSTANTINE ALEXANDER: You're not making it any closer to the --

ATTORNEY DENNIS BENZAN: No, no,



it's within the same footprint.

ANNE SNELLING-LEE: And we're simply just wanting to duplicate what's on the other side of that house. Rather than the rectangle shed that doesn't follow the geometry.

ATTORNEY DENNIS BENZAN: So we're doing two things: One is, again, we're increasing the functionality of the primary staircase. And, two, we're also balancing the house because on the left side we have bay area that's very similar to the one that's on the right side.

And we're also here seeking relief for a front porch. Again, this is a setback issue.

CONSTANTINE ALEXANDER: And that's a setback issue?

ATTORNEY DENNIS BENZAN: Yes.

CONSTANTINE ALEXANDER: And the setback required for the district required 20 feet. You're now -- the current porch

that's being removed and replaced approximately ten feet and you're going to now go to 7.635 feet to the street.

ATTORNEY DENNIS BENZAN: That's correct.

CONSTANTINE ALEXANDER: You're going closer to the street.

ATTORNEY DENNIS BENZAN: The problem with the current porch, it is in disrepair. There are no railings. It's not functional.

CONSTANTINE ALEXANDER: For the benefit of the Board, the members that's the current one right there. Okay.

ATTORNEY DENNIS BENZAN: And we're going to be putting a covering on the new porch. We're also going to be extending the sides so that essentially it's within the --

ANNE SNELLING-LEE: It's actually narrower than --

CONSTANTINE ALEXANDER: We have it

in the plans, but do you have a large even that to show the Board members?

ANNE SNELLING-LEE: I'm going to turn it this way.

So this line right here is the line of the where the old porch was (indicating). So we're tucking ours in about one-fifth less. And then we're keeping approximately 16 inches.

ATTORNEY DENNIS BENZAN: We are increasing the width but not increasing the depth.

CONSTANTINE ALEXANDER: You also have -- I know you do have it, elevations showing that front porch?

ANNE SNELLING-LEE: Yes.

CONSTANTINE ALEXANDER: Can we see those as well, please? Do you have one that shows the old porch and the new one side by side, please.

ANNE SNELLING-LEE: These are small ones quickly side by side, and I

also have a large one that I'll put out next.

CONSTANTINE ALEXANDER: On the left is the old one and on the right is what you're proposing?

ANNE SNELLING-LEE: And here's the large.

CONSTANTINE ALEXANDER: And that also reflects -- that drawing it also reflects the dormer change, the impact as well?

ANNE SNELLING-LEE: Yes.

CONSTANTINE ALEXANDER: I'm sorry, go ahead, Mr. Benzan.

ATTORNEY DENNIS BENZAN: We're doing a couple things here. We're again asking --

CONSTANTINE ALEXANDER: Excuse me. Go ahead.

ATTORNEY DENNIS BENZAN: We're adding a weather covering. And if this summer's any indication, that's going to

be something very important for the future. We're also improving the aesthetic design of the porch. We're going to be adding new railings to the porch and going to allow for the family -- which she just told me, we were speaking more about this, we expect to have some children coming soon, and it will allow a new play space for the children.

CONSTANTINE ALEXANDER: You can make that a condition of your decision.

TOBI PEARL: That would be something.

ATTORNEY DENNIS BENZAN: And in a way it's a very nice design. It's almost a gift to the street as the architect as pointed out. So, it's not inconsistent with what we see in the neighborhood. So I think this would be an important part of this project.

ANNE SNELLING-LEE: These are all from the same street.

BRENDAN SULLIVAN: When was the original -- well, what's there now, when was that done?

ANNE SNELLING-LEE: 1964.

CONSTANTINE ALEXANDER: I was going to say seventy-ish or something.

BRENDAN SULLIVAN: It's dated anyhow.

ANNE SNELLING-LEE: It's one of the oldest houses in the neighborhood and it had 20 acres or something. And then this entry was on the side. And then person who renovated in the sixties rotated it. That bay would have been existing and he just forced that stair in there.

CONSTANTINE ALEXANDER: That front porch to my way, is just an abomination frankly.

BRENDAN SULLIVAN: Well, it's a statement. We're not sure of what. Well, I mean at the time it was.

ANNE SNELLING-LEE: Right. And it's higher than a 30-inch drop off. So either way Tobi would want to put railings around it and bring it up to code and it would have looked worse.

BRENDAN SULLIVAN: Fine tuning of the house.

ATTORNEY DENNIS BENZAN: So it is a de minimis increase in size and we request that you approve the design.

CONSTANTINE ALEXANDER: Questions from members of the Board?

Does anyone here wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. And I can see no letters in the file.

Have you spoken to any neighbors about this project?

ATTORNEY DENNIS BENZAN: We have spoken to the neighbors. Just so that

you're aware, the house on the right side just sold.

CONSTANTINE ALEXANDER: It's being renovated, too.

ATTORNEY DENNIS BENZAN: The house in the rear is also being renovated. We've spoken to the neighbors on the left. There are no issues. And, you know, the new owners that are going to be moving into this house, they're going to be contributing greatly to the fabric of this community. Matthew Pearl who could not be here with us today, he's in New Hampshire. He's writing a book. He's a New York Times bestselling author. A number of books. So, you know, this is a family that wishes to make this place home, raise their children, and it is the best interest of our city to support this kind of family that's going to add very much to the fabric of the neighborhood.

CONSTANTINE ALEXANDER: Where are



the plans? Are we ready for a motion?

THOMAS SCOTT: Just one question. Why did you remove all the windows in that elevation?

ANNE SNELLING-LEE: Oh, the stair that was forced in there already did take -- there's actually not enough headway clearance even when you get to the second for me, someone who is six foot. By the time you get to the second floor landing you hit your head. And the existing stair, I think the way -- why it was designed the way it was, it was trying to miss one of the windows. And a previous owner had already taken out the historic windows and in the hope they put in elsewhere, but closed them all up with semi-translucent glass because of the conflict. And by the time we saw to fix the stair to solve all the height clearances, we would have risers blocking all will windows. It's just -- the stairs

shouldn't have been in the bay, it doesn't really work.

CHRISTOPHER CHAN: So just before we do the vote, the -- what we're looking for is the front porch because we're increasing the floor area there and it's covered?

ATTORNEY DENNIS BENZAN: Sure.

CHRISTOPHER CHAN: And the side dormer?

CONSTANTINE ALEXANDER: I'm not clear to me what relief.

SEAN O'GRADY: Is the dormer itself currently in the setback?

ATTORNEY DENNIS BENZAN: It is.

CHRISTOPHER CHAN: Yes. It would have become a special --

SEAN O'GRADY: It's an increase of volume.

CHRISTOPHER CHAN: And non-conforming part of the structure.

SEAN O'GRADY: Yes.

CHRISTOPHER CHAN: So it's not FAR. It could be slightly FAR.

SEAN O'GRADY: It is actually not FAR because it already is. Just structure.

CONSTANTINE ALEXANDER: Ordinarily that would be a Special Permit.

SEAN O'GRADY: No, actually that's always a variance.

CHRISTOPHER CHAN: Really? Because it's a roof.

SEAN O'GRADY: Enclosure or a -- but there's actually new mass in the setback.

ATTORNEY DENNIS BENZAN: Just to note, you know, there are no FAR obviously because we're way under FAR.

CONSTANTINE ALEXANDER: You should have setback issues, front and side. The side where the dormer is being constructed. Ready?

The Chair moves to grant a variance

to the petitioner to proceed with the alteration or reconstruction of the front porch and side dormer on the grounds that a literal enforcement of the ordinance would involve a substantial hardship to the petitioner. The hardship being that the existing dormer does not allow proper access and egress to the third floor because of the low level, the ceiling level. And also on the fact that you have a front porch that is not functional or consistent with the aesthetics of the building as it is.

That the hardship is owing to circumstances relating to the older structure. Location on the lot, particularly with regard to the side yard.

And that relief may be granted without substantial detriment to the public good. In fact, the project would improve the overall aesthetics of the structure, and the aesthetics of the

neighborhood in general.

The variance will be granted on the condition that the work proceed in accordance with plans submitted by the petitioner prepared by A-Plus SL Studios Architects, Inc. They're numerous in pages. They all begin with the letter A. The first page of which has been initialed by the Chair.

All those in favor of granting the variance on the basis so proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

(Alexander, Hughes, Sullivan, Scott, Chan.)

ATTORNEY DENNIS BENZAN: Thank you.

TOBI PEARL: Thank you very much.

(Whereupon, a discussion was held off the record.)

(9:05 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Christopher Chan.

CONSTANTINE ALEXANDER: The Chair will call case No. 9819, Eight Follen Street.

Anyone here wishing to be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one is here to be heard on this matter. The Chair further notes that it has come to the attention of the Building Department and this Board that the sign posting that's required by our Zoning Ordinance was not complied with.

No sign was posted. And as a result, the petitioner at our suggestion has requested a continuance of the case so that the posting requirements can be satisfied, and has also signed a waiver of the time to render a decision. In fact, I have a letter I should have read, I didn't realize it. A letter in the file dated to the Board: "Due to an error in posting, we would like to request a continuation of the next -- to the next available hearing. Sincerely, Douglas Okun, architect."

So what's the next available hearing?

SEAN O'GRADY: September 24th.

CONSTANTINE ALEXANDER: 24th.

The Chair moves that this case be continued until seven p.m. on September 24th on the condition that the sign now be posted in accordance with our Zoning By-Law. Such sign should reflect the new date, September 24th date.

The Chair further notes that the waiver of time to render a decision is already in the file.

All those in favor of continuing the case on the basis so proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case is continued.

(Alexander, Hughes, Sullivan, Scott, Chan.)

(Whereupon, a discussion was held off the record.)



(9:05 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9820, 12 Rockingham Street. Anyone here on that?

DAVID BRINKMAN: Yes.

CONSTANTINE ALEXANDER: You're seeking a Special Permit from us?

DAVID BRINKMAN: Correct.

CONSTANTINE ALEXANDER: Tell us a little bit about the Special Permit you're seeking.

DAVID BRINKMAN: We redid the house two years ago --

CHRISTOPHER CHAN: You have to give your name and address?

DAVID BRINKMAN: Oh, excuse me. David Brinkman, B-r-i-n-k-m-a-n. And I'm the home owner at 12 Rockingham Street.

We renovated the house two years ago when we bought it, and we didn't do the kitchen at the time. It was the only thing that we didn't do. We wanted to live with it to see how it worked. And we're doing it now. And we're asking for the Special Permit to remove two windows that are in there, to wall up those spaces and add one window that's a similar size set towards the back of the house.

CONSTANTINE ALEXANDER: Let me take that. It's in the file but let me just for benefit of the members of the Board distribute it.

DAVID BRINKMAN: That's about it.

The photo you have in front of you are the two existing windows.

CONSTANTINE ALEXANDER: Right.

DAVID BRINKMAN: And I marked on those photos that I took where the window would go, the new one.

CONSTANTINE ALEXANDER: I saw it. Have you talked to your neighbors, the one most affected by the new window and the old windows, too, I guess.

DAVID BRINKMAN: Yes. We've spoken with all the neighbors and they don't have any issues with it. The new window at the back of the house actually looks straight onto their siding instead. Whereas those two windows look into their windows.

CONSTANTINE ALEXANDER: The issue always before us in these kinds of cases is privacy of the neighbors.

DAVID BRINKMAN: Right.

CONSTANTINE ALEXANDER: In this

case you're effectively, in some sense, you're increasing the privacy by taking -- walling up two windows.

DAVID BRINKMAN: Right.

CONSTANTINE ALEXANDER: And the neighbors don't have any privacy concerns, they haven't expressed none to you.

Questions? You want to wait to see the plans.

CHRISTOPHER CHAN: My only question was it looks to me like the new window is a single light, non-operable, is that intentional? Is there a particular reason that you're doing that?

DAVID BRINKMAN: What do you mean inoperable?

CHRISTOPHER CHAN: Well, maybe it's just the style of the drawing. But it looks like it's just a big square plate glass window.

DAVID BRINKMAN: No. It's a Marvin tilt turn. So, it tilts out the

bottom to I think it's 10 or 12 degrees.

CHRISTOPHER CHAN: But it's still one large light as opposed to -- more of a modern than a traditional one?

DAVID BRINKMAN: Yes.

THOMAS SCOTT: Just one question and maybe Sean can help, can you have a habitable room with only one window like that? Isn't there a --

SEAN O'GRADY: It's a building code question. I know you have to have one.

THOMAS SCOTT: In the kitchen?

BRENDAN SULLIVAN: Eight percent?

SEAN O'GRADY: Eight percent.

THOMAS SCOTT: Eight percent of the floor area. Does that window achieve that?

DAVID BRINKMAN: Oh, yeah.  
There's on the back of the house there's another window and then two big glass doors.

THOMAS SCOTT: But is it on a per room, habitable room?

CHRISTOPHER CHAN: It's all one space.

THOMAS SCOTT: Okay. Okay.

CONSTANTINE ALEXANDER: The suggestion being made or where the question is going is whether irrespective of the relief we're going to grant you, or not grant you, you have a state building code issue. But I guess the answer is we -- it's going to be for you to work out with building, whether you do or not.

CHRISTOPHER CHAN: Actually I'm not sure the kitchen (inaudible).

CONSTANTINE ALEXANDER: When you go to get the building permit, it should be addressed. We couldn't give you relief from the state building code anyway.

DAVID BRINKMAN: Right.

CONSTANTINE ALEXANDER: Further questions, comments?

Anyone here wishing to be heard on this petition?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one wishes to be heard. And there is nothing in and no written correspondence in the file. Ready for a motion?

The Chair moves that a Special Permit be granted to the petitioner to remove and wall up two existing windows and replace with one window set toward the back of the house. A Special Permit would be granted on the basis that you cannot meet the requirements of the ordinance to do the work you're proposing.

That this window, these window changes would not generate traffic or effect patterns of access or egress or cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation of adjacent uses would not be adversely affected by these window changes.

That no nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupant or for the citizens of the city.

And that another -- the proposed window changes would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent or purpose of the ordinance.

The Chair would move that all of these requirements have been met because of the modest nature of what's being required. That there is no neighborhood opposition to the project. In fact, apparently there's neighborhood support.

And that the work be -- the Special Permit be granted on the condition that work proceed in accordance with plans submitted by the petitioner or drawings,



and plans, initialed by the Chair, one -- three pages in substance.

All those in favor of granting the -- and initialed by the Chair -- all those in favor of the granting the motion, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit's been granted.

(Alexander, Hughes, Sullivan, Scott, Chan.)

DAVID BRINKMAN: Thank you.

(Whereupon, a discussion was held off the record.)

(9:15 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9821, 16 Fairfield Street.

Is there anyone here wanting to be

heard on that? And before I forget, please give your name -- I always forget to do this, give your name and address for the stenographer please.

MARGHERITA HULL: My name is Margherita Hull and I am the owner of Fairfield Street. I also go by Margo Hull.

CONSTANTINE ALEXANDER: You're here for a Special Permit to enclose a porch?

MARGHERITA HULL: Yes. My intention in asking the City of Cambridge, the Planning Board is to enclose my two porches and to make necessary repairs to the porches that are dangerous at this point. I know you have some photos that are fairly attractive. I'm just -- I just took these photographs this morning just to show you that it's in pretty bad shape. The damage is from squirrel's rot and bugs I'm sorry to say.

By enclosing the front porch I'd be protecting the structural integrity from future damage and from the elements. And I would be enhancing the architectural integrity of the building. As part of this project I am cutting down some very overgrown evergreens and putting in more flowery shrubs in the front, which is going to create a more pleasant view from the street. I've spoken to all my neighbors on Fairfield Street. As you can see, I have their signatures on the petition, and they feel that my project will enhance the street as well as their property value.

CONSTANTINE ALEXANDER: Do you have a copy of that petition? Because I didn't see it in the file.

MARGHERITA HULL: Yeah. It's all the way at the bottom.

CONSTANTINE ALEXANDER: Way in the back here.

MARGHERITA HULL: There's at least 20 signatures.

CONSTANTINE ALEXANDER: Yes, I see it. Thank you.

MARGHERITA HULL: Okay? So, and I showed them the project, all of the pages that you have in front of you.

CONSTANTINE ALEXANDER: The issue you bring before us is an issue that we face a lot in front of this Board. I'm just going to frame it particularly for some members of the Board -- members rotate from hearing to hearing. And the issue of enclosing porches, front porches is an issue we wrestle with as a Board. As a matter of fact, just probably two sessions ago we had another part of the city a proposal to enclose front porches. Particular front porches that are already too close to the street, which is why you're here before us. You're in the front yard setback. And the problem, not

necessarily that it can't be overcome, but the problem in doing this is that it increases the mass in the structure so close to the street. And this Board has had concerns about that. In the case I mentioned a couple times ago was a three decker, not yours, and the proposal was to enclose the second and floor decks -- porches. And we turned it down because of the impact of the massing on the street. Now, your proposal is not a substantial impact as that. We're talking about just the front porch.

MARGHERITA HULL: And following the footprint.

CONSTANTINE ALEXANDER: And nevertheless it will increase the massing on the structure too close to the street, and that is the issue that we have as a Board when we get to deciding this and discussing this, I've got to wrestle that. I'm just saying that to frame the issue.

I will trust my views on that, but not necessarily going to do anything right now. That is the issue before us. And it's an issue, as I said, in a sense has extended an application beyond your case. Because once you do it for some people the question becomes will we do it for everybody else?

MARGHERITA HULL: I'm just following the footprint. I'm not going to extend it beyond the footprint of the house.

CONSTANTINE ALEXANDER: Right. But the wall of the house, if you will, the front wall will now be closer to the street because of what you propose.

MARGHERITA HULL: Actually, it was originally enclosed in the 1960's and 1970's. It did have a full screened-in porch that made it pretty opaque. And the Cambridge Historical Commission does have a photograph of it with the screening. So

it's not -- it was enclosed back in the sixties, seventies, probably eighties before I bought it.

CONSTANTINE ALEXANDER: At this point let me take public testimony. Is there anyone here wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. And when I get my file back, I'll read into the record the fact that there is a petition as the petitioner has indicated in support of the relief being sought.

MARGHERITA HULL: And both --

CONSTANTINE ALEXANDER: Just a minute.

The petition to the Board, it says: We the undersigned have reviewed the plans for 16 Fairfield Street and we do not object to the proposed plans. And there are 19 signatures with addresses all on

Fairfield Street with one or two exceptions. So there is a petition in support of the relief being sought.

MARGHERITA HULL: It's also both my abutters, and the abutters on Haskell Street in the back.

CONSTANTINE ALEXANDER: But the impact is not on -- I mean, the direct impact is not on them. It's on the street scape.

MARGHERITA HULL: Exactly. Yes.

CONSTANTINE ALEXANDER: And the city in general. That's an issue.

Tim, do you have any views you want to express or not?

TIM HUGHES: I'm not fond of it, but I'm not opposed to it either.

CONSTANTINE ALEXANDER: Chris? You want me to skip over you?

CHRISTOPHER CHAN: Yeah, I'd like to see the -- I mean, I think the main thing here is that it's a Special Permit



as opposed to a variance issue. I think we should probably go over those points before we actually -- it's easy to get the two confused when you're looking at these things. The threshold is quite a bit less for that.

CONSTANTINE ALEXANDER: Well, to grant a Special Permit and as Chris has noted, it's almost a presumption that you will get it if you apply as opposed to a variance. Although generally these cases can be forced on a Special Permit, not variances if my memory is correct. But the requirements for a Special Permit, we have to make findings that you can't meet the requirements of the ordinance with the relief you want us to do. And you can't because you're too close to the lot -- to the street as it is right now. And you got to meet that requirement. Then we've got to decide whether traffic or the generation of traffic or patterns of

access or egress would cause congestion, hazard or substantial change in established neighborhood character. We have to pass on whether the continued use of adjacent -- continued operation of adjacent uses would be adversely affected by what you want to do. We have to deal with whether what you want to do would create nuisance or hazard to the detriment of the health, safety and welfare of the occupant or the proposed -- or the citizens of the city. And to me the most important one in your case, we have to make a finding that what you want to do would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this ordinance. And I think that's where the rubber hits the road. The intent and the purpose of the ordinance is to have front yard setbacks, so you don't have houses with great mass

on the street or too close to the street. And that's the issue I think we've got, we've got to wrestle with. Whether what you want to do would in fact derogate from the intent and purpose of our ordinance. Chris, you said --

BRENDAN SULLIVAN: The conflict that I have is that, you know, you allow to enclose a roofed structure, yes, Sean?

SEAN O'GRADY: If it's not in a setback.

BRENDAN SULLIVAN: Right.

SEAN O'GRADY: Right.

BRENDAN SULLIVAN: The basic premise is if you have a roof, that you can enclose it.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: So you start off with that. But then -- and if people want to enclose say the back porches of their house, aesthetically I don't think it has any impact. Once you start

bringing the main wall of that house forward, that, that's where I have trouble. First of all, I was surprised in reviewing the file that there were so many people in support of it, I guess.

MARGHERITA HULL: My whole neighborhood on --

BRENDAN SULLIVAN: But I guess their retort is they want to do the same thing at some point. As far as the repair of the porches and what have you, that's just a deficiency in maintenance over the years I guess probably. But not any reason to do away with half the porches and then bring that wall forward. I just have trouble with bringing the front wall of that house forward. It's a gorgeous house. Lovely house. Aesthetically and architecturally it's just --

CONSTANTINE ALEXANDER: We feel that the aesthetics are undermined with what is proposed?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Yes.

Okay. You're on the record. That's my feeling as well.

THOMAS SCOTT: And it's my feeling as well. You have a really beautiful house here, and once you pull that plain forward, it really plays havoc with the symmetry of the house, just the essence of the style of the house. Are there any other houses like this in the neighborhood that have done anything similar like this?

MARGHERITA HULL: Yeah, there's --

THOMAS SCOTT: Do you know how many?

MARGHERITA HULL: The house in fact we borrowed aesthetically the house on Huron Ave. it was done several years ago, and they enclosed their front porch. And they did similar aesthetic design. And the --

CONSTANTINE ALEXANDER: You say on

Huron Avenue?

MARGHERITA HULL: Yes.

CONSTANTINE ALEXANDER: That's not in your neighborhood.

MARGHERITA HULL: Yeah, well, I mean that's -- and yes, there have been some in North Cambridge. But I can't offhand -- and aesthetically this was designed by Rick Eisler the architect, and he does beautiful designs. He has plasters. We are moving the front steps over a bit. We are using slightly more aesthetically pleasing, I think, columns in the front. And it's -- basically as it stands now and you have seen the pictures, I'm going to have to rip off this entire porch. I had serious termite damage about ten years ago on the house and I don't want -- the front porch is going to be wood, but it's going to be all treated wood. I don't want to have further bug damage in the front. It was mainly

localized in the back, but I'm afraid there may be termite damage to the front.

CONSTANTINE ALEXANDER: There is in fairness a bit of a disconnect here. You can, just because you have to replace the porch doesn't mean that it's a justification for enclosing the porch. You can just replace the porch.

MARGHERITA HULL: Well, aesthetically I think it's actually more attractive.

CONSTANTINE ALEXANDER: Okay. I understand that. That's why you want to do it.

MARGHERITA HULL: Yeah. I think it's beautiful design I came up with.

THOMAS SCOTT: Is there some functional reason why you want to gain that space? I mean....

MARGHERITA HULL: The porches are not used right now, and it is a 1920's building. The rooms are pretty chopped up

and pretty small, and it's going to create a very pleasing room when you walk in. And we may -- we want to keep it to the integrity of the 1920's. And we may have some built-ins that would be in keeping with the 1920's.

CONSTANTINE ALEXANDER: Chris? You don't have to, but do you have anything you want to say?

CHRISTOPHER CHAN: Well, you know, obviously I would agree with the other Board members that it would be sad if this was done. It's certainly a much more handsomer house with the bay windows set back, and with more keeping with the style of the house etcetera, etcetera. However, I would vote in favor just because I think the Special Permit's lowering the threshold and stopped based on what you said, views on it. Bringing the wall is sad, but whether we're really completely derogating from the Zoning when you



already have the hand rails there, it's a small. I would have to agree with you guys that it's unfortunate but I think I would.

CONSTANTINE ALEXANDER: Okay. I should weigh in, too. I basically agree with what Mr. Sullivan has said. I do think it will derogate from the intent of our Zoning By-Law, which is we're going down the slope of getting buildings closer and effectively the massing of the buildings closer and closer to the street, that's why we have front yard setbacks. And I am concerned about the aesthetics of the project, too. I accept your views, but I think the building looks better with the front porches than with what you're proposing to do. But that's not the issue before us. The real issue is the impact of the massing on the street, I think. My point of view, and I'm just concerned that it's too great. I think with that we're

ready for a motion unless anybody else want to make comments?

BRENDAN SULLIVAN: What about Tim?

TIM HUGHES: Well, like as I said before, I'm not fond of it for the same reason. I think the house looks better without it. But that's not our purview here. We're not here to adjudicate aesthetics. We're here to grant relief if it seems feasible. And as far as I'm concerned, the relief that's being asked for is not much at all. So, I would be in favor of the project even though I don't particularly like the way it looks.

CONSTANTINE ALEXANDER: Ready for a motion?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: The Chair moves to grant a Special Permit to the petitioner to enclose porches on the basis that given the nature of the structure, it being too close to the front street, it

doesn't satisfy the front yard setback requirements. Enclosing the porches cannot comply -- cannot meet the requirements of the ordinance.

That enclosing the porches will not impact patterns of access or egress or cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation or development of adjacent uses would not be adversely affected by the proposed enclosure of porches. That no nuisance or hazard would be created to the detriment, health, safety and/or welfare of the occupant or to the citizens of the city. And that the proposed enclosure of the porches would not impair the integrity of the district or adjoining district and would not derogate from the intent and purposes of this ordinance.

This such Special Permit would be

granted on the condition that the work would proceed in accordance with five pages of plans submitted by the petitioner and initialed by the Chair.

All those in favor of granting the Special Permit on the basis so proposed, say "Aye."

(Aye.)

(Hughes, Chan.)

CONSTANTINE ALEXANDER: Two in favor.

Those opposed?

(Show of hands.)

(Alexander, Sullivan, Scott.)

CONSTANTINE ALEXANDER: Three opposed. The Special Permit is not granted.

MARGHERITA HULL: If you want me to redesign this.

CONSTANTINE ALEXANDER: That's a decision you have to make. You can talk to Mr. O'Grady. I mean, the starting

point is we turn down someone, it's a matter of state law it's two years before you can come back before us unless you can convince us that there's a -- the new plans are a substantial change from your old plans. That would be the threshold. So if you want to redesign and you convince us it's a substantial change, I would only point out for you, and speaking only for myself, I think the problem you had with the Board is the massing by taking the -- bringing the structure forward to the street. It seems to me you're not going to solve that with other plans, but I may be wrong. I'm not an architect. I'll leave that to you to decide. You can talk to Mr. O'Grady. But what you have before us tonight was not approved.

MARGHERITA HULL: Okay. Well, my neighbor just did a variance that was a two-year project that was massive for the

land. And I mean, it's my immediate abutter.

CONSTANTINE ALEXANDER: I can't comment on that. I mean, it didn't involve an enclosure of a porch?

MARGHERITA HULL: Oh, yes it did. And enlarging the FAR ratio, too. Okay.

CONSTANTINE ALEXANDER: Thank you.  
(Whereupon, a discussion was  
held off the record.)

(9:30 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9822, 16 Stearns Street.

Is there anyone here wishing to be heard on that? And as you probably heard sitting here all night, please state your name and address for the stenographer, please.

FRANZISKA AMACHER: I'm Franziska Amacher. I'm the architect for Joe Maguire and Dani Adams.

CONSTANTINE ALEXANDER: Do you want to spell your name or give your card to the stenographer?

FRANZISKA AMACHER: Its' on the drawings. It's A-m-a-c-h-e-r. 239 Mount Auburn Street, Cambridge.

CONSTANTINE ALEXANDER: Now, you're here before us because you want a variance to construct an addition to an existing non-conforming single-family dwelling.

FRANZISKA AMACHER: That's right.

CONSTANTINE ALEXANDER: And your issues are -- your Zoning issue why you're before us in the first place, you have a slight left side setback issue. You're going to go from 9.8 feet to 9.7 feet and you're required to have 9.8 feet. So you've got a slight. That's what I get from your dimensional form; is that correct?

FRANZISKA AMACHER: That's correct. And but, also this is a non-conforming site in that it's less than 5,000 square feet. And the setback on the southwest side is currently waiving all the requirement. We are hoping to be able to make this addition because it's actually, it's a very small house. It's the smallest house in the neighborhood, and it's just not sufficient anymore for this couple. And so because the increase in size is more than 25 percent, we had to



go to a variance rather than Special Permit. And so the plan -- what we were planning to do --

CONSTANTINE ALEXANDER: You have a very deep backyard as I recall. So you're extending into the backyard but you're not cutting into the rear property line. You're still going to be quite a bit away --

FRANZISKA AMACHER: Right.

JOE MAGUIRE: That's correct.

FRANZISKA AMACHER: What we're planning to do is to add basically this area in here (indicating) on the first floor and then a portion of it on the second floor. Let me show you. This is the rear as it is right now (indicating). And that's the front (indicating). This is kind of the proposal. And for your review we have, first of all, a Google map.

CONSTANTINE ALEXANDER: What is

the purpose of this?

FRANZISKA AMACHER: Just to see how the, you know, that's the smallest house in the neighborhood.

Let's see, here are some more photos. And so I can run through these. So, the house that is on the southwest side to the right has done essentially the same thing -- they added an addition to fill this whole thing in here (indicating). They, however, did it on the whole width. While we're planning to keep this roof here (indicating) which will make the setback condition better for the neighbor to the south because we're essentially not changing anything on that side. But we are coming out further to the lot. And there are a couple of functional reasons for this.

One is that the current house has not just enough space for, you know, a comfortable living, dining, kitchen area.

The second issue is that in view of future, you know, of growing old and potential illness, we wanted to have a room downstairs that could function as accessible bedroom.

Now, we were kind of concerned about not impacting the neighbors too much. So the plan is to make this here into a green roof (indicating). So it will have this kind of aesthetic. And this is -- and so basically making this whole thing sort of into a green hill. And to make this wall to the north side, northeast side also into a green wall, which is a great new system where plants grow up on.

CONSTANTINE ALEXANDER: I'm sure you're planning to do that and will do that. But I guess from a zoning point of view we have no assurance that that will happen. If we grant relief, you're going to do what you're going to do with the structure. I'm not suggesting you won't

do it. I just wanted to point that out.

FRANZISKA AMACHER: Well, you know, they're, they love gardening.

JOE MAGUIRE: We're not going to put up, you know, obscene topiaries or anything.

FRANZISKA AMACHER: The other thing for the neighborhood that we're doing as you can see, the original house has this porch that was enclosed and this issue --

CONSTANTINE ALEXANDER: We're not talking about enclosed porches.

FRANZISKA AMACHER: And we're opening it up so it can function more as a neighborhood space. So let me see if there are any questions.

CONSTANTINE ALEXANDER: One question, these are the plans that we have in our files?

FRANZISKA AMACHER: Yes.

CONSTANTINE ALEXANDER: And when

we get to making a motion, we're going to tie the relief if we do grant it to build in accordance with the plans. Are those the final plans?

FRANZISKA AMACHER: They're the same plans.

CONSTANTINE ALEXANDER: Okay. I also want to make sure that you're not -- we have sometimes issues people think that substantially with those plans and then you're going to run into problems with the building department.

FRANZISKA AMACHER: Right, no.

CONSTANTINE ALEXANDER: You're okay with that?

JOE MAGUIRE: They're final with respect to the exterior.

CONSTANTINE ALEXANDER: Okay. We have no concerns with the interior. That's not a zoning issue.

BRENDAN SULLIVAN: This back addition here.

FRANZISKA AMACHER: Yes.

BRENDAN SULLIVAN: That is coming off?

FRANZISKA AMACHER: No, that's staying. And this is where this was (indicating). So this side of that roof remains exactly as it is.

BRENDAN SULLIVAN: This here stays?

FRANZISKA AMACHER: Yeah.

BRENDAN SULLIVAN: Which is --

THOMAS SCOTT: I guess they remove all of this to build....

BRENDAN SULLIVAN: Well, that's what's a little confusing to me. What happens to this wall here? This roof stays which I pick up as this here (indicating). But then down --

FRANZISKA AMACHER: Then --

BRENDAN SULLIVAN: -- down below, this here is new?

FRANZISKA AMACHER: Yes, right.

Then there's -- there is like --

BRENDAN SULLIVAN: The roof is suspended. That's what I was trying to figure out the mechanics here.

CHRISTOPHER CHAN: Yeah. A big beam roof. Push it all the way up to the second floor.

BRENDAN SULLIVAN: I mean, it's an element that will stand out. It's an element that will be there when it's all completed.

CHRISTOPHER CHAN: Yeah. They may end taking it.

BRENDAN SULLIVAN: But the functionality they may end up taking it off.

JOE MAGUIRE: We may end up taking that part of it.

BRENDAN SULLIVAN: Because you're not going to be able to work around it.

FRANZISKA AMACHER: Well, we're going to like build a truss right

underneath where it is.

BRENDAN SULLIVAN: I guess what's a little bit lacking -- sometimes I think really what we need is having everything broken down to its simplest form.

FRANZISKA AMACHER: Yeah, I'm sorry I didn't on that drawing -- I didn't show it here what the original structure was.

BRENDAN SULLIVAN: Well, sometimes what I like to see is existing and then the proposed filled in or dotted or slashed or something so that it's quite definitive as to what is there now. Now, my understanding is that this is the house there now?

JOE MAGUIRE: On the first floor it's --

CHRISTOPHER CHAN: I think she's got it right here.

BRENDAN SULLIVAN: So, this right here is the outright. That's sort of the



plan that hopefully had been in the file.

FRANZISKA AMACHER: Yeah.

BRENDAN SULLIVAN: So this is what's here now. And then what you're doing is you're going to add this here.

FRANZISKA AMACHER: Exactly.

JOE MAGUIRE: On the first floor.

BRENDAN SULLIVAN: And then this is the roofed element.

FRANZISKA AMACHER: Yes.

BRENDAN SULLIVAN: Still over here.

FRANZISKA AMACHER: Yes.

BRENDAN SULLIVAN: Okay. And then on the second floor you've got a roof over here.

FRANZISKA AMACHER: Yep.

BRENDAN SULLIVAN: And then this here becomes a bedroom onto a balcony.

FRANZISKA AMACHER: Exactly.

BRENDAN SULLIVAN: And then this section up in here becomes your planting.

FRANZISKA AMACHER: Right,  
exactly.

CHRISTOPHER CHAN: Which is the,  
it seems like the two reasons you're here  
is a slight change in the side yard  
setback.

FRANZISKA AMACHER: Yes.

CHRISTOPHER CHAN: And the 25  
percent rule. Is that the only two  
reasons we're here?

FRANZISKA AMACHER: Right, yes.

CHRISTOPHER CHAN: Can you just  
show us the side yard.

FRANZISKA AMACHER: Oh, I would  
also like to point out the slight change  
has to do with insulating the house more,  
you know, from the outside.

CHRISTOPHER CHAN: So that wall is  
staying the same but you're just going to  
add another new layer on it.

FRANZISKA AMACHER: Right.

CONSTANTINE ALEXANDER: And

because of the size of the condition continuing along the setback.

CHRISTOPHER CHAN: Longer.

CONSTANTINE ALEXANDER: Longer. I thought it was more for the 25 percent because of the size of it.

CHRISTOPHER CHAN: That's the whole mass.

CONSTANTINE ALEXANDER: Yes.

CHRISTOPHER CHAN: But it still conforms FAR wise and open space wise and everything else.

FRANZISKA AMACHER: Yeah.

CONSTANTINE ALEXANDER: Yes, the relief being sought is actually rather slight.

CHRISTOPHER CHAN: Tiny.

CONSTANTINE ALEXANDER: Yes, tiny. Given the size of the project relative to the existing structure, surprising how little zoning relief they need.

DANI ADAMS: We worked very hard

for that.

CONSTANTINE ALEXANDER: Is there anyone in the audience wishing to be heard on this matter? Please come forward. We are keeping a transcript so we need -- if you want to speak, you have to give your name and address to the stenographer.

JODIE GARBER: That's fine. My name is Jodie Garber. I live at 18 Stearns Street. This is my daughter Margaret Levy. She also lives there. I just -- one point of information you mentioned 25 percent. I spoke to Mr. O'Grady the other day and I thought you said ten percent above for a non-conforming. Did I misunderstand?

SEAN O'GRADY: Okay. We're talking about increasing the variant volume under --

CONSTANTINE ALEXANDER: I think what we're talking about is whether they need a variance rather than a Special

Permit because of the increase in non-conformance is going to be more than 25 percent.

SEAN O'GRADY: Up to ten percent building permit, ten to 25 percent, Special Permit, over 25 variance.

CONSTANTINE ALEXANDER: Variance. And they're over 25 so therefore they need a variance.

SEAN O'GRADY: Okay, that seems right.

CONSTANTINE ALEXANDER: Does that answer your question? Did that answer your question?

JODIE GARBER: Yes, I guess I wasn't sure.

CONSTANTINE ALEXANDER: I'm sorry, I didn't catch your name.

JODIE GARBER: My name?

CONSTANTINE ALEXANDER: Yes.

JODIE GARBER: I'm Jodie Garber and I live at 18 and I live on the north

side.

CONSTANTINE ALEXANDER: Okay.

JODIE GARBER: I have a copy of a letter that I gave to Joe and Dani I would like to give.

CONSTANTINE ALEXANDER: I don't have a copy in the file.

JODIE GARBER: I hadn't given it. And I have a little testimony and some pictures, also.

My name is Jodie Garber. I live at 18 Stearns Street. It is with regret that I'm here tonight to testify against the granting of a variance for the plans as presented for 16 Stearns Street. It has been said that good fences make for good neighbors, but I think it might be more true to say that good communication makes for good neighbors. I'm sorry to say this wasn't the case in this instance. I first saw the plans for the proposed addition to my neighbor's house ten days ago, and then

only after I had asked to see hem. There had been no attempt to communicate with me to solicit my opinion before or during the planning stages and not even any notice in advance of the filing to let me know what to expect. I was there for an ill-prepared for the design I saw in front of me which was presented as complete. In any event, having seen the plans for ten minutes, and there's a supporting letter that says 30, so we can split the difference at 20, and only after the petition for a variance had been filed, it leaves me in the extremely uncomfortable position of having to testify here tonight against the request. Why I do not like the scope of the changes, I almost equally do not like having to go against the wishes of my neighbors. We share a tight border. In fact, I have to go onto their driveway to tend a flower garden that abuts my house. I have Exhibit A.

CONSTANTINE ALEXANDER: Okay.

JODIE GARBER: We both have dogs and we both have friends on the street. I, however, have lived on Stearns Street for 17 years and have seen two families move from No. 16 when it can no longer fill their needs. As a result of the lack of communication and really consideration, I feel I have been forced into the role of the bad guy standing in the way of a couple who only want to make some improvements to their house. This did not have to be adversarial. I've lived in Cambridge for almost 40 years. My children have attended Cambridge Public Schools from Kindergarten through Rindge. I've been active in community affairs and have served on city boards. I am not a selfish nay-sayer or even an unreasonable person. I am, however, someone who values her property and wants to continue to enjoy it, and whose right to do so is



protected by the zoning code. As I stated in my letter to Dani and Joe, I have no objection to a renovation of 16 Stearns Street. It's a small house. But not impossibly small with the Sullivan family of seven lived there for decades and before that the Mylans, a family with 11 children. Which is really hard to believe. I do object, however, to the size and scale of the current plans. If the house were to be extended and enlarged as proposed, it would have the effect of boxing in my limited open space -- my limited amount of open space, and instead of having adjacent yard, I would be looking onto a bulky structure of disproportionate size. Current zoning, if I'm correct, and I'm apparently not allowed for an increase of 25 percent that potentially existing non-conforming building which plans these plans exceed that parameter. Again, I understand the

desire to make renovations, but I also feel that the house is what it is, a small cottage. And the desire to make it into something very different needs to be tempered by the reality that made the house desirable in the first place. It's relative affordability, it's sighting on the light, the neighborhood on which it's located, and its architectural style, history and integrity. In home improvement as well as life in general, we all have to strike a balance between what we would ideally like to have, and what is not only possible but also appropriate. It's a very tricky business to find the right balance, but in the long run it usually works out for the best. And I really have stated, stated everything in the letter to them. I do value them as neighbors. I am really upset that I can't support this the way it is.

CONSTANTINE ALEXANDER: I would

not purport to read your letter to your neighbors in the file.

JODIE GARBER: No, I submitted it because it's --

CONSTANTINE ALEXANDER: You want me to read it part of the file to make it a part of the public record or is it just a private letter?

JODIE GARBER: I don't care if you read it or it can't just slide into the file.

CONSTANTINE ALEXANDER: I'm going to leave it in the file, but I'm not going to make it part of the record unless you --

JODIE GARBER: No.

CONSTANTINE ALEXANDER: I just think it's not necessary or appropriate.

If I can summarize, not summarize but come to the -- I think your problems, and tell me if I'm wrong, I'm not trying to put words in your mouth, is the size.

Not necessarily an addition, it's this addition of this scope. Is that the sort of substance of your --

JODIE GARBER: Yes.

CONSTANTINE ALEXANDER: -- of your opposition?

JODIE GARBER: Yes.

I also have a letter which there were some other issues, and I understand from previous testimony that you don't deal with siding although this has asbestos I wasn't sure if that came up. That's just support.

CONSTANTINE ALEXANDER: Okay, thank you.

JODIE GARBER: This is also -- I'd like to also mention -- this is my backyard. I don't know what pictures you saw before. This is the house to the south side, and the addition to 16 would come out. And on my other side is another house that -- so I would be in a tunnel

sort of thing.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard?

Sir.

JIM NEWMAN: Evening.

CONSTANTINE ALEXANDER: You heard, name and address.

JIM NEWMAN: Jim Newman, 11 Stearns Street in Cambridge, Massachusetts. Live across the street from the property in discussion. And I just have a pretty straight forward statement. I speak in favor of the project. This is a classically tiny workers' cottage in this neighborhood.

CONSTANTINE ALEXANDER: I'm listening, go ahead.

JIM NEWMAN: I'm fine. The -- it's I believe the building currently is 900 square feet or so, maybe a little bit under that. That's a triple decker's

single flat. And the scope of the addition is -- does not make it into a giant house by any means. I live in a house across the street that is almost twice as big. And also as Ms. Garber has to say, this is a tight neighborhood. We feel strongly about the relationships and value them and want to make sure everybody is happy and supported in the process. That's about it.

CONSTANTINE ALEXANDER: Thank you.

JIM NEWMAN: Any questions?

CONSTANTINE ALEXANDER: Brendan, you have the dimensional form. What's the current size of the house and what it will be after the addition?

BRENDAN SULLIVAN: Is this section of Stearns Street part of the down zoning proposal?

JOE MAGUIRE: Yes.

JIM NEWMAN: It is.

BRENDAN SULLIVAN: It is. So it's

-- is it half of Garden Street and that whole block up to the firehouse and down and on the other side of Sherman Street? Is that all part of the down --

JIM NEWMAN: It goes to the -- yeah, it's on the other side of Sherman Street, goes up on the other side of Stearns and Fenno. I'm not sure if it comes down on Stearns on that side. But it includes Fenno and Winslow. And it includes the houses on Stearns Street on my block, but not the houses on Walden abutting us.

FRANZISKA AMACHER: May I make a comment?

CONSTANTINE ALEXANDER: Just before you do that.

BRENDAN SULLIVAN: It's a proposal working its way through the system now to change from C-1 to residents B which in effect goes from .75 down to .5. That's all.

CONSTANTINE ALEXANDER: Well, the proposal, though, would bring them -- they're directly at a .62. So, you're right, it would be a non-conforming, you're right. Right now they're .35. I just want to read into the record that the size of the house and the size of the addition. The house, according to the dimensional form, currently 1,068 feet of gross floor area. And with the addition, if we grant the relief, it would go to 1,886 feet. So roughly 800 square feet or almost double the size of that house.

JIM NEWMAN: I'm not quite double the size. Almost.

CONSTANTINE ALEXANDER: Not quite.

JIM NEWMAN: Exactly.

CONSTANTINE ALEXANDER: All set?

JIM NEWMAN: My house is still much bigger.

JOE MAGUIRE: Nah-nah, boo-boo.

CONSTANTINE ALEXANDER: Anyone



else wishing to be heard on this matter?  
Sir.

ANDY ECKLES: Hi. My name is Andy Eckles. I live at 10 Stearns Street. We're I guess we're the south abutters. I just want to be very brief and say that I do support the proposal.

CONSTANTINE ALEXANDER: Okay.

ANDY ECKLES: That's all.

CONSTANTINE ALEXANDER: Thank you. Anyone else wishing to be heard?

JOE MAGUIRE: I do.

CONSTANTINE ALEXANDER: You'll have your opportunity, not right this second.

We have two letters in the file that I will make part of the record and read into the file. One is actually an e-mail from Abram, A-b-r-a-m and Debra Klein, K-l-e-i-n at 20 Stearns Street. "I am writing in regard to variance case No. 9822, Joe Maguire's plans to construct an

addition to 16 Stearns Street. My wife Debbie and I own the neighboring house two doors down at 20 Stearns Street where we live with our three children. We have lived there since 2001. We support Mr. Maguire's plans. I've discussed the details of the project with him and believe that the enhancement to his house will improve the neighborhood."

There's also a letter, it's handwritten so I may stumble a little bit as I read it.

JOE MAGUIRE: I have perhaps a better copy.

CONSTANTINE ALEXANDER: I can't read his handwriting.

JOE MAGUIRE: Oh, that's the original. That's the best you can do.

CONSTANTINE ALEXANDER: It's written Lesley Cioffi, C-i-o-f-f-i at 21 Stearns Street. "I am a 15 year resident of a home at 21 Stearns Street and write

you this letter in support of a variance requested by Joe Maguire to construct an addition to his home at 16 Stearns Street. Although Joe has only owned his home for a year or so, he is well known to the neighborhood and friendly with many to the street's residents. For the last ten or so years, he was a regular house sitter for my next-door neighbors. This was how we met Joe and how over the years how he became known to my three young children as Uncle Joe. Perpetually single he was lucky to fall in love -- I'm sorry.

JOE MAGUIRE: This is a very newsy letter.

CONSTANTINE ALEXANDER: "To a wonderful woman Dani." Did I get it right?

DANI ADAMS: Dani, yes.

CONSTANTINE ALEXANDER: "Dani, who is now a neighbor, too. The home they share, while adorable, is quite tiny and

in my opinion could use both an upgrade and some expansion. I have reviewed the architectural plans and am excited about the improvements Joe and Dani hope to make. I think the changes will improve the beauty and utility of their home and property and will also complement the surroundings and add appeal to the neighborhood as a whole. I hope you will support their endeavors."

JOE MAGUIRE: Yeah, there are a few other folks who I believe sent e-mail. We made some supplementary material for you to look at. So, I just -- I want to say that, you know, in the spirit of the letter that Lesley wrote, the relationships on the street are very important. When Jodie initially gave me the letter -- to me and Dani saying that she was going to oppose, you know, she said, you know, my heart is racing. And I said, well, you know, now mine is, too.

You know, it's an upsetting thing. And we have a cordial relationship with Jodie and we don't want anything to interfere with that because, you know, we want to live on this street because of the relationships because of the people, not because the Zip Code or something. I have -- so, you know, we may talk about Jodie's objections here and, you know, I just want to say that it will, you know, completely be respectful and I want, you know, Jodie to understand that we really do hope to be happy in this house for the rest of our lives. And that, you know, that includes getting along with all of our neighbors.

So, the drawings that you see in front of you are the result of some long conversation that we had about trying to balance, you know, the needs of our neighbors, our needs, the spirit of the neighborhood. One of the things that happened when we submitted the, submitted

these drawings, is that these plans is Franziska said well, you can expect to have a hearing in maybe three or four months. It takes a long time. So we actually submitted these drawings in late June and the hearing comes up on July 23rd, so for that I was very surprised by that and I'm, you know, terribly sorry that folks feel that they didn't have enough time to look at the drawings. You know, I guess that maybe this means that not that many people are building. But we got a hearing much faster than we expected to. We certainly meant no offense, and we didn't mean to sneak anything under anyone's attention.

When you look at the drawings you'll, you know, we wanted to serve the needs of the neighborhood and so you'll see we didn't build above the kitchen, because building above the kitchen would enlarge that wall that is far too close to

the property line. And so we actually had some initial sketches in which we did that. We realized we don't want to do that, that's not in keeping with the spirit. We abandoned plans for a second story above that back room because we really wanted to preserve views and preserve airiness of the backyard of, you know, ours and our neighbors. We opened up the porch because we really want to introduce the street into the house and vice versa. So, you know, the house right now is sort of an understated just how unworkable the house is. The bed is in the living room. I have a -- maintain an office at home, and it's been suggested that, you know, maybe the office is a bit of a luxury and a lot of people use their offices in the corner of one room. But, you know, I'm not up there paying my taxes and making up my holiday list once a year. That's how I make my living. I've written

several books published by Addison Wesley, published by Simons Schuster from home offices. I was an editor and a regular columnist for a magazine. For a while I did all that work from a home office. Right now I have a full-time job. My company doesn't provide an office for me to go to. They say when they bid for these jobs, everyone works in a home office. They -- that policy works well for them because they can do worldwide searches for folks. So, we, you know, we really need the home offices.

Dani is also the author of a book and her book outsells all of mine combined. And her book still sells robustly six or seven years later. Her publisher is sort of pestering her to write a second edition. And so we, you know, would like to have the increased royalties from that. And so there's a room that's planned doing double duty as a



spare bedroom and a guest room and Dani's office. So, that's, you know it's not really practical to rent an office elsewhere or anything like that.

CONSTANTINE ALEXANDER: Maybe one observation, and it is only an observation. We sit and hear these cases all the time, and you're here first timers. When we -- many times when we have a petition before us where there is some neighborhood opposition, and the neighborhood opposition is not necessarily to the project itself, but to the scale of it or to some of the design, what often petitioners do, hearing that neighborhood opposition and trying to keep peace in the neighborhood, is to continue the case. Sit down with the neighbors, as the case you pointed out came before us quicker than you thought, and see if you can reach an accommodation, a modified proposal presumably unless you can persuade the

neighbor.

JOE MAGUIRE: I --

CONSTANTINE ALEXANDER: I say we do that, it means putting the case off for a few months. It's not -- I'm not in any way suggesting that you should do that or you must do that. Whether you should is up to you.

JOE MAGUIRE: I understood that that was one of the possible outcomes. That this wasn't necessarily wasn't going to be a binary thing. But there are -- but allow me to keep going a lit bit.

That, you know, one of the main objections is that the addition is too big. And we did some calculations from the city assessor's office, and at the end of this addition my house will still look like something that Jim's house coughed up. My house will still be the smallest house on the street of all the houses. It will be, you know -- the three smallest

houses in the neighborhood, in fact, and there's some, there's some photos, some diagrams in the package I handed out to show this. The three smallest houses on the street will be mine and the two abutters on either side. Andy Eckle's and Jodie, and both of them spoke. So, you know, we set out on this project thinking about well, you know, you want to sort of -- it's legitimate about making the house sort of, you know, like the other houses on the street, sort of the average size of the other houses on the street. And some of our initial drawings were actually like that. And, you know, we realized that the houses that immediately flanked us that would be most affected are also on the small side. And so we kept bringing in our drawings and bringing in our plans to the point where the after picture of this house would still be the smallest house on the street because we

wanted to honor, you know, our neighbors. So given that that the, you know, the objections are that the house is too big and the house is, you know, the addition is massive, you know, I want to suggest that it's not. And that, you know, I notice that on a previous case you said well, one of the problems -- one of the issues that you have is when you do something for somebody then you got to think about doing it for somebody else. A number of the houses on the street were built like mine in like the 1890's, and my house was built in 1891, it was a cottage for workers who worked in the brick yards I guess. And Andy's house I believe is like that as well. And that house has been expanded in much the same way that we would like to expand this house. And so I, you know, it doesn't seem appropriate to say well, we've allowed this for all these other houses on the street, and, you

know, yours is gonna be too big. And you can't make a house that -- that house that's going to be the smallest one on the street is still too big.

Dani, anything you want to add?

DANI ADAMS: Yeah, just a couple of things. First of all, thank you. It's way passed my bedtime. So if I get a little emotional --

CONSTANTINE ALEXANDER: You never make it as a member of the Zoning Board.

DANI ADAMS: I know, I know, it's just terrible. But I just want to start with a little history and then make two comments.

Just in November of 2007 everything changed. When Joe bought this house, he was a single man who worked as a consultant outside the house. In November of 2007 we met, he was offered an amazing jump in his career to take this job that requires him to have a home office. And

my job moved from Boston to Medford. When we met, I owned a house in JP which was quite a bit bigger and much nicer. My apologies.

JOE MAGUIRE: She's right.

DANI ADAMS: But as soon as I met the people, all the people that surround our house, it was really a no-brainer that we were going to move to this street, but unfortunately it meant his house. I'm still -- I'm going through something. The two comments that I want to make is one, about the idea of a continuance.

We worked very, very hard trimming all the fat off this house. We've -- you've already heard that we decided not to build all the way south the way we might have. We -- some of the other decisions we made specifically in consideration of Jodie's position was that we are only building a second story in a region that's against a three-story wall

of her house that has no windows. So she won't be seeing that. And then what goes out into our yard is a single story. And the idea to have a green roof was from looking at Jim's house across the street. But, in fact, the idea of having a green wall also, which I didn't even know existed, came from a conversation that Jodie and I had had where we talked about how much we both love ivy colored walls. So I -- I'm so sorry that she feels like we were trying to get something passed too fast. I don't believe that we showed the plans to anybody much sooner than we showed them to her. We had trouble getting together. I'm very sorry that she feels that way.

The second thing that I want to bring up, again, apropos of the size, it's really only three rooms. It's a small dining room, a small living room and a small bedroom. It looks bigger because

the living room and the dining room don't have a wall separating them. The -- you need to add those -- this was brought up before, and out of respect for my privacy, neither of these very kind people went into it. But the fact is I have quite severe scoliosis, and my mother -- it looks very much like my mother's, who at this point in here life can no longer take stairs. And as much as I hate to admit it, it is probably inevitable that the same thing will happen to me. So, keeping a room that can be separated off on the first floor, which is already doing double duty as my office and a guest room for our, among other things, 30 nieces and nephews, it's a serious need that I don't want to face but kind of have to.

So just in summary, we need to grow our house in order to accommodate changing careers and future health needs. We worked very hard to make it as small as it



is and have managed to make it so that it will remain the smallest house on the block. Unfortunately in the last couple of weeks Joe and I have started to talk about the worst case scenario which is moving out of the neighborhood. And I'm very sad about that. We are good people. We're good neighbors. We designed our 700 square foot addition always keeping the neighborhood and the planet in mind, and we want to stay in our little house forever.

CONSTANTINE ALEXANDER: Thank you.

I think we'll cut-off further commentary.

Members of the Board want to express any views, opinions? Tim?

TIM HUGHES: I'm good with the project.

CONSTANTINE ALEXANDER: Chris, do you have anything to add?

CHRISTOPHER CHAN: Did you look at

the plans at all and review any of the -- just that they were a little light in terms of the drawing. I just -- did you have a chance to review numbers?

SEAN O'GRADY: I had the same feeling.

CHRISTOPHER CHAN: What?

SEAN O'GRADY: I had the same feeling.

CONSTANTINE ALEXANDER: So did I. They are on the light side. That's one of the reasons why I asked whether the project can go forward on the basis of these plans without further change. I think you're satisfied, Sean, that if we did approve the project based on these plans, that these would be sufficient for your purposes in terms of issuing building permits or having the city issue building permits?

SEAN O'GRADY: They're scaleable I assume?

FRANZISKA AMACHER: (Nodding head.)

SEAN O'GRADY: Then, yes.

CONSTANTINE ALEXANDER: Anyone have further questions or comments?

CHRISTOPHER CHAN: No.

CONSTANTINE ALEXANDER: Brendan?

BRENDAN SULLIVAN: I don't know, I just think it's more dialogue that's really in order. I think what came back and struck me was that you said that the time frame had been shortened from the filing to tonight. And that maybe if some additional time had been fruitful. And I empathize with, you know, really this what we need type thing and I guess minimal of what we need, your next-door neighbor does have standing. And even if the Board were to approve it, can stop it. And I would hate to, you know -- I don't want to force you into anything. But I'm just wondering if some additional dialogue might reach

some accommodation so that would not be an ultimate course of action by your neighbor. But anyhow, that's my put on it.

CONSTANTINE ALEXANDER: Before Tom speaks I just want to express sort of the same point of view. I'm a little surprised given the closeness of the neighborhood and your absent willingness of dialogue and the like, to not want to have further dialogue strikes me a little bit. We have to go to the merits, and I'm prepared to vote on this on the merits. But I am a little bit surprised by that.

JOE MAGUIRE: It's not that I don't want to have further dialogue. It's that the say as much as -- tell you the whole story and then hear your recommendation.

CONSTANTINE ALEXANDER: It's not our decision. It's not our decision to -- I mean, we could suggest to you one way or

another, like, for example, I'm not suggesting it. We could suggest to you that you're not going to get relief from us tonight with these plans given the neighborhood opposition and, therefore, maybe you want to continue the case to rethink the plan. We could say that. We're not saying it, not yet anyway. But that's one reason.

Other than that, it's just a matter of the neighbors, yourself and your neighborhood, deciding maybe it's a better idea, we all got to live together and rather than pushing the case to a decision now, to wait a while and have some further dialogue. You may get nowhere on that dialogue. You most often do. Our experience on the Board is that often these things prove to be beneficial.

BRENDAN SULLIVAN: You may go off and have dialogue and then you may come back and say we have reached a compromise,

we have agreed to disagree. And, you know, so be it. And then the Board makes then that -- their decision. But, again, hanging over all of this is that your next-door neighbor has legal standing. And even if the Board were to grant it, and sometimes we see some rather strenuous and strong opposition for a project, and yet the Board affords stepping back from tonight sitting down -- and, again, you may come back and say, well, we've tweaked this and we agreed to disagree or something. But that one extra step then forestalls legal action at the end. Because legal action contesting this Board's decision stops it. And it stops it for a whole long time.

DANI ADAMS: Yeah, just to comment that may turn out to be the best thing to do. Unfortunately that means that's a three month wait which brings us into the winter which means that we're waiting

until next spring before we can begin whatever happens.

BRENDAN SULLIVAN: Yes. There's all kind of variables in play.

CONSTANTINE ALEXANDER: That's the thing you've got to put into -- yes, that's true. That's one of the reason not to do it.

CHRISTOPHER CHAN: Theoretically that's what you thought you had to do when you first filed so....

JOE MAGUIRE: Pardon?

CHRISTOPHER CHAN: That may have been what you thought you had to do when you first filed, you really thought it would be two or three month delay before it was actually being heard.

DANI ADAMS: It was, and we were very nervous about it.

BRENDAN SULLIVAN: I mean of thinking, you know, two months ago we had a case down in Sparks Place where a person

came and had a very delapidated house, not even habitable, and wanted to put an addition on to this, and the woman next-door, very nice lady said, you know, they really haven't sat down and talked to me or whatever. I have some concerns about it. And they wanted to plow forward. We actually granted that.

CONSTANTINE ALEXANDER: That's right.

BRENDAN SULLIVAN: And the next-door neighbor filed suit against the Board and it stops the project.

CONSTANTINE ALEXANDER: And if a suit is filed you can't go forward until the suit is resolved. And however long it gets resolved is up to the Court. It could be years.

DANI ADAMS: I don't know if this is the right body to ask this question, but what would -- it would very much surprise me if Jodie was that upset about



it. I don't know.

CHRISTOPHER CHAN: Ask her.

DANI ADAMS: Again, I'm so surprised that she felt we weren't communicating. It seems to me we've been having conversations about this for months, and she's been talking with us about her concerns, and we've been talking and, you know, tried to explain about the siding. That no, no, no, we weren't going to put up the vinyl siding. And no, no, no, dealing with the asbestos, it's the way we may do it. It's perfectly safe. There's been a lot of dialogue, so I'm very -- this is the first time I've heard that she feels that way.

CONSTANTINE ALEXANDER: I understand.

DANI ADAMS: But, again, I would be very surprised if she wanted to go that far. So the question I actually have is what -- on what basis can that kind of

suit be filed? I mean, what would the reason have to be?

CONSTANTINE ALEXANDER: I won't get into it in great detail. Basically if we granted relief, the basis is that the relief didn't comply with the statute. You didn't just -- despite our findings that you didn't really meet the requirements for a variance. And so legally granting the variance by us was inappropriate, and a court would reverse it and by court decision would deny the variance. That's how it would be.

The other thing that I wanted to -- one other further thought, and I want to give Tom a chance to talk, too. There's an issue beyond worrying about a lawsuit that you should worry about. The other questions is that you live in a neighborhood, and you want to go out of here with hard feelings or you want to have -- to try to avoid hard feelings by

having further conversation. That's the other reason for a variance --

DANI ADAMS: Absolutely.

CONSTANTINE ALEXANDER: -- and try not to avoid conversation. But again that's your call not our call. Let me let Tom, unless you want to respond to what I'm saying.

FRANZISKA AMACHER: Well, I just think that it's also a question of fairness and you as a Board have, you know, the --

CONSTANTINE ALEXANDER: We'll make a decision. We have to be fair. But, you know, the conflict -- you have to live with the consequences of that decision pro or con. And we're trying to get you to a position where the end result is more beneficial than a fight with your neighbors. I don't want to say any more about it.

JOE MAGUIRE: The tension is

nobody's liking it and so, you know, but that's --

CONSTANTINE ALEXANDER: It's your call. Tom?

THOMAS SCOTT: Just one comment and that kind of goes to these two elevations with, you know --

JOE MAGUIRE: Orient it here.

THOMAS SCOTT: -- this is the south or the right side of the house.

JOE MAGUIRE: Okay.

THOMAS SCOTT: The left side of the house which is towards I guess your neighbor Jodie. In that this side of the house really has -- is broken down.

JOE MAGUIRE: It has a texture to it.

THOMAS SCOTT: It's got some texture to it. It's got some plains that are pushed back. It's got some movement in it that it's interesting and nice and allows light to kind of penetrate deeper

into the neighbor's yard. Where this elevation is really just a tall wall. Yes, I think that's what she's objecting to. Is that why can't this elevation have a little more of this type of feel?

JOE MAGUIRE: It is a very narrow lot, and I'm not debating you.

THOMAS SCOTT: And I don't know how to solve it. All I'm saying is it seems like there was a lot more attention given to this side of the house than this. And, you know, the whole fact that you took -- you made the effort to try to save this portion of the existing building, I thought, was very admirable, but you did nothing on this side of the house to kind of create that same kinds of a feel.

FRANZISKA AMACHER: This is what the neighbor did right next-door.

DANI ADAMS: And also that --

FRANZISKA AMACHER: That house is just two feet away from the property line.

BRENDAN SULLIVAN: That whole neighborhood Stearns Street, Fenno Street on both sides of -- well, off of Garden, off of Sherman Street were all built as sort of workers' cottages and there's some three-families sprinkled in there, and have gone through a tremendous amount of change and renovation over the years with mixed results. And I walk down the streets every single day and I look and I look at, you know, something and sometimes I say oh, that was done very nice. And then I look and I think, you know, bad taste is worse than no taste at all what other people have done. So, it's an eclectic group being of housing all up and down that street with, again, with mixed results. And what am I saying? I'm saying that I'm not sure I would model anything off of anybody else to be honest with you. I think it has to stand on its own merits because -- and, again, your

neighbor's not concerned about what's across the street or on either side, it's what's right next to her I guess.

FRANZISKA AMACHER: I would like to draw your attention to this. When you see the three dimension it's really much more alive.

CHRISTOPHER CHAN: You should included the neighbor's houses in the three-dimensional drawings.

DANI ADAMS: Yes, I actually wanted to point out that one of the reasons that we --

THOMAS SCOTT: But you've lost the character of the oak gable of this house, and you kind of just blended this addition into that -- you've created a big blank wall. I think that's --

DANI ADAMS: Jodie's house on that side is a big blank wall and it's a driveway between so that's why we were

less concerned about it.

THOMAS SCOTT: I understand.

DANI ADAMS: And focussed more on making the part that jets out that she will be able to see the top of. Making that --

THOMAS SCOTT: It's not about just building buildings, but what are the spaces around the buildings, too? I mean, they have to be comfortable, too. And I think you need to, you know, respect other people's ability to move around their house as well as your own, to have light filter to, you know, to the yard below and that sort of thing. So, I'm just concerned about kind of the size and blankness or flatness of that wall.

FRANZISKA AMACHER: Can I point out in that handout, in this one here, if you look at the neighboring houses and their locations, you will see also when you look at the totals of the -- of



Jodie's house, the yellow house --

THOMAS SCOTT: Yes.

FRANZISKA AMACHER: -- this is the view they have of her house which is a blank wall essentially.

DANI ADAMS: I also, I'm so glad I get to tell you I worked so hard on that little drawing. One of the reasons I did that is I wanted to put in the greenery to give you a sense of that part of it. And the hedges that separate our two houses are well over six feet. While there would certainly be a view of the top -- the green top of our living room, it would be very minor. It certainly will not block light. Jodie's yard is fairly well shaded already because of trees to the east. Again, we thought about this issue and kept it one level because of that. Right now her view is of three houses down. The three-story house or the two-family house at the end of the block. We're not going

to be blocking the style. We're not going to be blocking her view of anything lovely other than our garden. We did think carefully about it even if she doesn't think so.

CONSTANTINE ALEXANDER: Well, I guess assuming there's no further comments from the Board members, do you want us to vote on this case tonight?

JOE MAGUIRE: I'm very curious about what I heard you say earlier. I'm rookie at this. I came earlier to listen to some of the other cases.

CONSTANTINE ALEXANDER: That's fine.

JOE MAGUIRE: Did I hear you say a no vote means we can't come with new plans for two years?

CONSTANTINE ALEXANDER: Basically the same plans for two years. You can come before us if you have a substantially revised plan and we concur that it's

substantially revised, then we can hear the case again. But if you came back with the same plans or slight, you know, variation, no, the opportunity is -- that's the state law.

JOE MAGUIRE: Yep, yep.

TIM HUGHES: I want to make an observation, because I heard this earlier that I heard the blankness of the one wall leading into the addition which is the single story and the green stuff is opposite a blank wall on a house where there is no, you know, sight lines, no visibility back and forth between the two houses. That's the one thing I wanted to suggest. That what they -- what I do think is sensitive about this design is that what is going to be seen from the adjoining neighbor's yard is that one-story green part of the house. And maybe it doesn't have as much texture as the stuff on the other side of the house,

but I think it is sensitive to the idea of what's going to be viewed from the neighbor's yard. Having said that, and I've already -- I'm on record of being in favor of this project. I don't think it's fair to ask them to make a decision about a continuance unless we can come clean and give them an idea of whether or not there's enough votes here to carry on the project, you know. I don't think we should leave them in a lurch.

CONSTANTINE ALEXANDER: I'm not sure I concur with that. I mean I think the purpose of -- I mean, you're in effect you're taking a straw vote. People were trying -- when we suggest a continuances they're more than just how are they going to come out of the case. It's an attempt to help you work better with your neighbors and create a better neighborhood. So it's not just simply counting noses. That's in my view, Tim.

Tim has a different view.

If you want more time by the way, it's the last case of the night, but if you want a little bit more time, I'm prepared to stay a little while longer if you wanted to --

THOMAS SCOTT: There just seems there should be more conversation between you and your neighbor.

JOE MAGUIRE: I'm aghast and embarrassed that there are neighbors who think otherwise. But their opinion counts. And if they think we haven't been communicating enough, that's out there. A vote, even if you took a straw pole and said oh, this is probably going to pass, you know, given that we're in a situation where we have misunderstood each other as much as we have, a straw vote doesn't comfort me because I don't feel that I understand well enough that there isn't a lawsuit out there. And so, I can't

believe I'm saying this because we really, really gave our best effort to work with the, you know, peculiar size of the lot, the width of the lot, what we understood of the existing setbacks. We knew we needed a variance, but we wanted to act as if we didn't so we were honoring all the various setbacks that I was aware of. And so we, you know -- I'm surprised to hear myself say that because we are -- we feel that we really tried to do this, but I'm not the only opinion that counts here.

THOMAS SCOTT: It seems like you satisfied everybody except this one neighbor.

JOE MAGUIRE: Don't vote. And her objection is it's too big. And it will still be the smallest house on the block, so I don't know --

THOMAS SCOTT: From her perspective.

JOE MAGUIRE: I don't see a path

out of this. If the objection is too big, you know, we really don't have a whole lot of elbow room as it is, and it's a very modest addition that's very minimal. But I --

FRANZISKA AMACHER: Her house is too big.

JOE MAGUIRE: Don't vote.

FRANZISKA AMACHER: Her house is bigger.

THOMAS SCOTT: I don't know that the objection is that the house is too big. I mean, there's this big blank wall there.

JOE MAGUIRE: Yeah, I mean I can only go by what the letter said, it's too big.

DANI ADAMS: Yeah, it's the letter that she sent to us that you chose not to read in. What she said there which is what we thought the issue was was that it was massive.

CONSTANTINE ALEXANDER: Which she more or less said it in her statement tonight.

JODIE GARBER: That it was an accident?

DANI ADAMS: Massive.

JOE MAGUIRE: An accident?

DANI ADAMS: That's what we thought we were addressing her concern.

BRENDAN SULLIVAN: I'm not trying to be judge of head of guidance here. If you were to read the tea leaves, that a prominent attorney who is before us all the time, would take that as a suggestion from Mr. Sullivan that more dialogue is probably necessary and would be fruitful.

DANI ADAMS: No question.

CONSTANTINE ALEXANDER: If we were to continue the case, when would we be able to hear it, assuming the five of us can be there? What's the next opening?

SEAN O'GRADY: October 8th.



CONSTANTINE ALEXANDER: October 8th. You should just know that.

DANI ADAMS: I know, I know.

CONSTANTINE ALEXANDER: And I assume all five of us can be here October 8th?

TIM HUGHES: I don't have anything planned that far in advance.

CONSTANTINE ALEXANDER: Yes, the reason we have to have to the same five people.

JOE MAGUIRE: Oh.

CONSTANTINE ALEXANDER: If we continue it. It's called a case heard. The merits of the case. Not just any five members --

JOE MAGUIRE: In practice does that end up being a real logistical difficulty?

CONSTANTINE ALEXANDER: We usually find out right now. I know I can be available October 8th.

DANI ADAMS: I actually haven't a vacation in about a year, and our first chance was the second week in October. I'll do it.

CONSTANTINE ALEXANDER: No, no, I'm not saying you have to continue it. I wanted to put that in your decision.

DANI ADAMS: I wanted to assure everybody that there is no question that the dialogue will be continued and continued and continued. We do not want to have a bad relationship with Jodie. I like Jodie. We talk about our gardens. We, you know, I planned the wall for her. You know, it's --

BRENDAN SULLIVAN: I think they need to step back from tonight and then have more dialogue, more conversation. October is the only -- Sean, that's the only --

SEAN O'GRADY: You are -- you're overbooked on the 13th, on the 10th of

September, on the -- well, you're fully booked on September 24th, but October 8th is the first, is the next meeting and that's the first one you had the actual opening.

BRENDAN SULLIVAN: Fully booked for the number of cases or for the type of cases?

SEAN O'GRADY: For the -- you have -- well, we have a light regular agenda on August 13th, but we now have five continued cases. September 10th we're just opening now, but I expect there to be a bit of a rush on that because of August 27th which we have four --

CONSTANTINE ALEXANDER: We just don't know -- I know what you're getting at. A case that looks like a no-brainer, there could be neighborhood opposition like we have tonight.

BRENDAN SULLIVAN: We have a short calendar here.

JODIE GARBER: Can I ask a question? If there were a dialogue and they were to come back, it would be an easy -- it would be -- it might be more easily resolved a second time.

CONSTANTINE ALEXANDER: The happier solution is there is dialogue, and you reached agreement on these plans, the modified plans and you came back before us, they came back before us, whatever you worked out. There I can give you quite a bit of assurance that you will get relief. You will get relief, not you.

JODIE GARBER: No, no, I'm just saying it would be like in and out.

CONSTANTINE ALEXANDER: Yes, it would be in and out. It would be a quick case.

JODIE GARBER: Maybe it could be slid into an earlier date.

CHRISTOPHER CHAN: It may not either.

DANI ADAMS: Am I allowed to speak with Jodie now? Or is that --

CONSTANTINE ALEXANDER: Do you think you can resolve things, we can give you 10 or 15 minutes. We'd like to get out of here tonight.

JOE MAGUIRE: You'll need new drawings and stuff.

DANI ADAMS: Well --

JOE MAGUIRE: You'll need new drawings.

CONSTANTINE ALEXANDER: I know you're on the horns of a dilemma. I'm sorry to put you there, but I don't know what else we can do to help you out.

JOE MAGUIRE: Life happens.

CHRISTOPHER CHAN: I will say a couple of things. Generally I don't know if I will generalize. We generally take the views of abutting neighbors very seriously, and we generally don't vote against that unless we have seen that

there has been sufficient dialogue. And I think there's something that we can go a little further notwithstanding your description of what occurred. I personally would like to see it, and I think maybe your neighbors would like to, and maybe you have produced some of this stuff. Some three-dimensional modeling of your house and your neighbor's house together. Might help or hurt to have some sun studies of what happened and, you know, which side of the house --

JOE MAGUIRE: Sun studies you said?

CHRISTOPHER CHAN: Yes. You did talk about it. Some of the stuff may actually help you if done properly with relieving some of your neighbor's concerns about certain things. I do agree that that wall is a little bit undeveloped, and while it is against the neighbor's undeveloped wall, that doesn't mean that

you can't develop it a little bit or change the character of that little alley. And I will say that I do think, you know, you obviously worked very hard and I do appreciate that, notwithstanding what I'm saying now, and I do -- that does come across in terms of you're really trying. And so I recognize that. And I would also say that it is -- even though it's a variance, it's a relatively small -- it's not -- the things that we request are relatively small even though it's a fair little large addition for the size of the house. However, as Brendan noted, the literal guidelines for variances are very strict. You should be aware of those.

DANI ADAMS: I'm sorry, the what guidelines?

CHRISTOPHER CHAN: The literal guidelines for granting variances are fairly strict. You should be aware of that.

FRANZISKA AMACHER: The variance did not address so much the aesthetics but the mass.

CONSTANTINE ALEXANDER: They don't address the aesthetics per se.

FRANZISKA AMACHER: And that's why I didn't put any in the detail on the drawings because I didn't want to distract.

CHRISTOPHER CHAN: Well, you know, if you're a good architect actually maybe that would help as opposed to distract. So I mean, I think sometimes when you just see a box, it looks like a box. And if you had actually some development, it might, you know, I think you were saying that it might actually help your case as opposed to hurt it. Now, obviously it means doing more work on something that you're not sure you can actually achieve, but, you know, I think -- as I said earlier, I thought the drawings were a



little light. And I mean, in actual fact a lot of the times if you were really literal about what we asked, we need to have some really good drawings on what's going to be built, because in fact those are going to be signed by Gus and that is what has to be built. I know it puts the applicant in a difficult situation of spending a lot of time and money on something that's up in the air. But I think the more you're able to develop things is going to be stronger in your favor in terms of what we're able to see. If something is fairly schematically drawn, it makes it a little harder for us to visualize what's actually going to be there and maybe a little less confident about voting for something.

JOE MAGUIRE: I have nothing to add. I'm learning a lot.

DANI ADAMS: It's okay. I think we're requesting a no vote. So, continue.

CONSTANTINE ALEXANDER: Request a continuance to -- what was the date, I'm sorry, October 8th?

SEAN O'GRADY: 8th.

CONSTANTINE ALEXANDER: Ready for a vote?

The Chair moves to continue this case as a case heard until seven p.m. on October 8th on the condition that you sign a waiver of -- you have to sign a waiver of notice at the time to reach your decision, otherwise you'll be forced to decide the case tonight. You heard that on the Harvard College case.

DANI ADAMS: If we submit as a new -- if we submit just a new request rather than as a case heard, would that be sooner?

CONSTANTINE ALEXANDER: No, no. I'll get to that. If the result of your -- I'll interrupt my motion for a second.

If as a result of your dialogue with

your neighbor, you result in modification of these plans, you would submit those revised plans no later than the Monday -- five p.m. on the Monday before the October 8th. Those new plans, and we would consider them. But the five of us would have to sit on those new plans.

DANI ADAMS: And if it ends up that we agree to disagree --

CONSTANTINE ALEXANDER: Yes.

DANI ADAMS: -- that we think this is a very modest addition and she thinks it's a massive addition --

CONSTANTINE ALEXANDER: Right.

DANI ADAMS: -- what happens?

CONSTANTINE ALEXANDER: We will in all certainty take a vote on October 8th and we'll approve what you want or not approve. It would be up or down effectively. And then it's out of our hands.

DANI ADAMS: So the support of

everybody else is not --

CONSTANTINE ALEXANDER: At that time you would need, there would be five of us sitting here, you would need four votes in favor of granting you the variance. It's state law. It's not the majority. Not three of the five. It would have to be four of the five.

DANI ADAMS: If we have a continuance to case heard?

CONSTANTINE ALEXANDER: It has nothing to do with continuance. If we decided the case --

DANI ADAMS: If we did it new?

CONSTANTINE ALEXANDER: Yes. If we decide the case tonight, you need four votes. The variance is supermajority vote and a Special Permit, too. Four out of five votes.

MALE AUDIENCE MEMBER: Is there another notification needed?

CONSTANTINE ALEXANDER: I'll

answer that in a second.

What will happen is, and as part of the motion, I'll get back to my motion. That we would grant a variance on the condition that you signed a waiver of notice, otherwise we have to decide the case the tonight.

DANI ADAMS: Oh, yes. Joe has to sign it.

CONSTANTINE ALEXANDER: And on the further condition that the sign that's on your property now, which advertised tonight, change with a magic marker, change the date to the new date, October 8th.

And on the further note, and advice to you that if you choose to submit revised plans for our consideration on October 8th, that those revised plans must be filed with the Building Department no later than five p.m. Monday on the night before the hearing. That we all have to

study those plans if there are new plans, and it gives the neighbors, including Ms. Klein the right to study the plans for whatever reasons she hasn't seen them before, or any other neighbor like this gentleman back here.

JOE MAGUIRE: I'm definitely not taking this all in. Are you getting all this, and do I get to read it?

CONSTANTINE ALEXANDER: Sean, can go over it with you in greater detail. I can stick around tonight.

JOE MAGUIRE: All the bureaucratic paperwork. I don't want to have a snafu about that.

CONSTANTINE ALEXANDER: Change the sign.

JOE MAGUIRE: Does that sign have to be up between now and October?

DANI ADAMS: Three months.

CONSTANTINE ALEXANDER: And even after the decision it has to stay up,

until we file our written decision with the city clerk.

JOE MAGUIRE: I can't tell you how many people walk passed, looked at the sign quickly and thought the house was condemned or something.

DANI ADAMS: We don't have to keep it nailed to the house.

CONSTANTINE ALEXANDER: Only two things to remember: Change the sign and keep it up. And if you change your plans, you get the new plans in the file by the Monday before. Nothing else.

BRENDAN SULLIVAN: And the other component is if the plans do change which affects the dimensions, the dimensional form has to be changed to reflect the new drawings.

JOE MAGUIRE: Oh. So I need to fill out stuff or just sign it and hope somebody fills it out.

CONSTANTINE ALEXANDER: Just sign

it.

JOE MAGUIRE: My mother taught me never to do this.

CONSTANTINE ALEXANDER: I know. Your lawyer will tell you the same thing.

TIM HUGHES: Is your mother a lawyer?

CONSTANTINE ALEXANDER: Anyway, that is the motion to continue the case.

All those in favor of continuing the case, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. We'll see you in October.

(Alexander, Hughes, Sullivan, Scott, Chan.)

JOE MAGUIRE: Thank you for your time. So now this goes to --

CONSTANTINE ALEXANDER: Give it to Sean.

JOE MAGUIRE: Sean.

CONSTANTINE ALEXANDER: And Sean



is always available if you have questions about the process going forward, he's the man.

(Whereupon, at 10:45 p.m., the meeting was concluded.)

**C E R T I F I C A T E**

**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a  
Certified Shorthand Reporter, the  
undersigned Notary Public, certify that:

I am not related to any of the  
parties in this matter by blood or  
marriage and that I am in no way  
interested in the outcome of this matter.

I further certify that the testimony  
hereinbefore set forth is a true and  
accurate transcription of my stenographic  
notes to the best of my knowledge, skill  
and ability.

**IN WITNESS WHEREOF**, I have hereunto  
set my hand this 27th day of July 2009.

---

Catherine L. Zelinski  
Notary Public  
Certified Shorthand Reporter  
License No. 147703

My Commission Expires:  
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